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The Enforcement of the Munitions of War Acts, 1915-17,

with particular reference to

Proceedings before the Munitions Tribunal in Glasgow,

1915-1921

by

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## SUMMARY

The legal control of wartime industrial relations, especially in Glasgow, produced ambiguous results for those upon whom the restrictive Munitions Acts impinged. Firstly, drastic labour controls did on occasion amplify, rather than suppress, industrial conflict. Secondly, factory discipline, especially timekeeping, may have been marginally improved as a result of penal deterrence, though other factors were probably more significant. Thirdly, trade unionists who found the restrictions on wage advances and on mobility an insufferable fetter in a tight labour market, could seek, nonetheless, to further their interests through the legislation, in spite of the statutory curbs. Thus they and their trade union officials, in a relationship frequently marked by mutual support at the tribunal, sought to exploit the legislation's manifold provisions resourcefully and imaginatively. For example, they sought to manipulate, to their advantage, ostensibly restrictive provisions by means of 'collective bargaining by litigation', and they also attempted to turn defence into attack in those cases where the employer had instigated a contentious prosecution.

It is argued that the varied and ambiguous results flowing from munitions workers' involvement with the tribunal reflects the double-edged quality of legislation which displayed, if only partially, certain corporatist features. Thus it embodied both blunt restrictiveness on the one hand, and flexibility and opportunism for labour on the other. For the object of the legislation, according to its sponsors, was to foster the 'national interest', which could justify, through the attempt to eliminate the operation of the market in the munitions trades, limited restrictions on employers as well as restraints on labour. Trade unionists thus maximized their opportunities under the Munitions Act, while defending themselves with vigour against its coercive deployment. Working class attitudes to law were, in conclusion, marked by a new boldness and directness in the circumstances of the war.

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Among the children of Glasgow between 1915 and 1921, I wish to mention two in particular. To them, my parents Mary and Bernard Rubin, I dedicate this work.

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ABBREVIATIONS

ABIS	Associated Blacksmiths and Ironworkers' Society
AIMS	Associated Iron-Moulders of Scotland
ASCJ	Amalgamated Society of Carpenters and Joiners
ASCM	Amalgamated Society of Coremakers
ASE	Amalgamated Society of Engineers
BEV	Beveridge Collection on Munitions
CIU	Commission of Enquiry into Industrial Unrest
CSA	Clyde Shipbuilders' Association
CWC	Clyde Workers' Committee
DORA	Defence of the Realm Act
EEF	Engineering Employers' Federation
ETU	Electrical Trades Union
FEST	Federation of Engineering and Shipbuilding Trades
FRD	Fabian Research Department
FSIF	Friendly Society of Iron-Founders
ILP	Independent Labour Party
KDEEA	Kilmarnock District Engineering Employers' Association
LRD	Labour Research Department
MAR	Munitions Appeal Reports
NAC	National Advisory Committee on Labour Output
NAUL	National Amalgamated Union of Labour
NFWW	National Federation of Women Workers
NWETEA	North-West Engineering Trades Employers' Association
OHMM	Official History of the Ministry of Munitions
PRO	Public Record Office
SEF	Shipbuilding Employers' Federation
SMAR	Scottish Munitions Appeal Reports
SRO	Scottish Record Office
SSA	Shipconstructors and Shipwrights' Association



Abbreviations (Continued)

TUC	Trades Union Congress
TURC	Trade Union Rights Committee
USB	United Society of Boilermakers, etc.
WEWNC	War Emergency Workers' National Committee
WMV	War Munitions Volunteers

"'Wha sae base as be a slave' - let him seek employment in a  
'Controlled Establishment'"; William Diack, in the Scottish Review (1917)

Labourer: Have we to return and work for this starvation wage?

Sheriff Fyfe: You have; that is the law at the present time. For  
the time being, you are in a situation which you have  
never been for generations. You are under discipline.

Labourer: Coercion, my Lord.

Sheriff Fyfe: Well, coercion, if you like. But it is in the national  
interest (1916)

W.G. Sharp (trade union official): The object of the Ministry seemed  
to be to secure as many convictions  
as possible.

Lord Dewar (appeal tribunal judge): I have no reason to believe that  
the attempt is to get convictions  
against men: the object is to try  
to keep them at work (1916)

### Wee Deoch and Doris

(Extra verse)

Now our heroes in the trenches  
Need the proper kind o'shell.  
If they'd only had them long ago  
They'd have given the Germans Hell.  
And all the blame at first was laid  
Upon the working man,  
But Lloyd George sees his great mistake  
And tries the proper plan.

### Chorus

Jist a wee clever lawyer,  
Jist a wee yin, that's a' -  
And although he called us shirkers  
Yet we'll help him yin and a'.  
For the Boilermakers' members  
Still are British workin' men.  
At the ship or the bench,  
Like the lads in the trench,  
Oh, "We're a'richt, ye ken."

United Society of Boilermakers' song (1915)

## INTRODUCTION

This study seeks to examine the empirical working of the code of labour legislation, the Munitions of War Acts 1915-17, during the First World War. The munitions code, fragments of which remained operative till February 1921, constituted a radical break with the pre-war 'voluntarist' tradition of industrial relations. A system remarkable, even in 1914, for the degree to which collective labour relations were 'so little regulated by law',<sup>1</sup> suddenly became, in the wake of war, one pervaded by intrusive legal restrictions.

The broad objective of the 1915 Act, which was the principal measure among the code of three munitions statutes, was to promote industrial discipline in the factories and shipyards, and to minimise interruptions to the production of war matériel. For our purposes, its major provisions were five-fold. These were, first, to declare work stoppages illegal and to substitute compulsory arbitration in their place; second, to institute a system of statutory wage regulation; third, to promote a system of factory discipline, the details of which were contained in the Ordering of Work regulations which accompanied the Munitions Act; fourth, to render unlawful any rules, customs or practices of organized labour which hindered the output of munitions, with a view, principally, to forbid the maintenance of the craft unions' restrictive practices and to grant legitimacy to the dilution of labour programme; and, finally, to encourage permanence of labour by requiring workmen to obtain a leaving certificate from their employers before undertaking alternative munitions employment, with a penalty of six weeks unemployment imposed on the workman in the event that such

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<sup>1</sup> E.H. Phelps Brown, The Growth of British Industrial Relations, (London: Macmillan, 1959) p. 355.



certificate had been lawfully withheld.<sup>2</sup> The enforcement of these provisions was the responsibility of specially constituted munitions tribunals, modelled on the panels set up under the national insurance legislation brought forward by Lloyd George before the war. They therefore comprised employers' and workmen's assessors as well as legally qualified chairmen. There were two classes of tribunal, though the distinction is not, historically, of much significance. To the general munitions tribunal were reserved originally those cases which the Ministry of Munitions, the sponsoring government department, assumed to be of greater importance, in particular, strike prosecutions and prosecutions of employers accused of having poached munitions workers from rival firms. The second class of tribunal, the local munitions tribunal, dealt with the more frequent proceedings, that is, with leaving certificate applications, and with prosecutions of workers alleged to have infringed the Ordering of Work rules.<sup>3</sup> In addition, an appeal tribunal was established from April 1916, over which a Court of Session judge in Scotland, and a High Court judge in England and in Ireland, presided.<sup>4</sup>

The prime purpose of the present study is to explore the work of the munitions tribunal, with particular reference to the Glasgow tribunal. It will therefore examine, inter alia, the pattern of decision-making and the reasons therefor, the nature of the controversies generated within the tribunal (controversies which surrounded the tribunal

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<sup>2</sup>For a brief and undeveloped account, see G.R. Rubin, 'Wartime Industrial Relations Legislation and Legal Institutions and Procedures: The British Munitions of War Acts, 1915-1917', in S.B. Burman and B.E. Harrell-Bond (eds.) The Imposition of Law (London: Academic Press, 1979) ch. 14.

<sup>3</sup>For a fuller discussion of the structure, organisation and jurisdiction of the munitions tribunal from the perspective of the lawyer, see G.R. Rubin, 'The Origins of Industrial Tribunals: Munitions Tribunals During the First World War', Industrial Law Journal, Vol. 5, 1977, pp 149-64 (henceforth Rubin 1977a)

<sup>4</sup>For the constitution of the Munitions Appeal Tribunal, see G.R. Rubin, 'The Munitions Appeal Reports 1916-1920: A Neglected Episode in Modern Legal History', Juridical Review, Vol. 22(N.S.), 1977, pp 221-37 (henceforth Rubin 1977b). As is implied by their titles, both this paper and that cited in note 3 (supra) do not, in general, address questions of significance for the labour or social historian.

chairmen as much as those workers appearing before them), the contribution of the tribunal to the furtherance of government munitions policy, and the consequences for Labour of the eventful and complex experiences of munitions workers at the hands of tribunal discipline.

It is necessary to indicate the limitations to which this research has been subject. Many studies of the pattern of adjudication by courts of law can rely on a healthy series of informative statistics to guide the researcher in his or her explorations. Though bald statistics for the present work are available to a limited extent, individual case papers, for the most part, no longer exist. Thus in terms of tribunal statistics, the proportions of, say, women to men, young persons to older workers, skilled to unskilled, engineers to shipbuilders and so on, cannot be discovered. In order to recover tribunal hearings from day to day or from week to week, reliance was placed principally on the local press; while Appeal Tribunal hearings, so far as they were useful, for historical purposes, were extracted from the Scottish Munitions Appeal Reports (as well as from their lengthier English counterparts). Some case papers still survive among the records available in the Public Record Office, but the vast majority relate to Appeal Tribunal hearings which tended to be reported in the specialist law reports in any case. We believe, however, that we have portrayed a reasonably accurate picture of tribunal proceedings in Glasgow over time, and that we have at least identified the more significant hearings conducted in the district.

By 'Glasgow' is in fact meant the Glasgow region which, apart from the city itself, includes also Lanarkshire, Dunbartonshire and Renfrewshire. The study therefore includes cases originating from munitions establishments located in, inter alia, Airdrie, Coatbridge, Motherwell and Wishaw; Alexandria and Dumbarton; and Paisley, Johnstone and Renfrew. In addition, chapter nine, which includes an examination



of leaving certificate statistics, seeks to compare the tribunal returns in Glasgow with those from five other large cities in Britain.

As a study of the relationship between war, law and labour, this work does, of course, tend to dwell on certain institutional features of that relationship. Yet the political analysis of wartime labour legislation explored primarily in chapter one, offers, we believe, an indispensable theoretical context within which the empirical dimension to our study can be comprehended. Indeed, it is perhaps of no little significance that the title, The Politics of Industrial Relations, was that chosen not by one, but by two separate authors in recent years, whose books examined the emergence of industrial relations legislation in the 1970s.<sup>5</sup> As Royden Harrison has reminded us, it is indeed the unique reversibility of labour laws which underlines their political importance.

Conscious of our own limitations, we have eschewed the attempt to engage the economic analysis of the munitions code. The economic analysis of law, involving the application of sophisticated statistical tests of measurement is currently one of the growth areas of socio-legal studies. Indeed, the approach has even begun to influence our understanding of the impact of specific labour controls on social structure, and might, if capable of application to the working of the Munitions Acts, enrich our understanding of their effects. Yet as a technique for the evaluation of the impact of statutory provisions concerned with the history of employment and of industrial relations, the approach, very much associated (perhaps wrongly) with the 'Chicago school' of economic theory, is still in its infancy and not free from controversy.<sup>6</sup>

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<sup>5</sup> Michael Moran, The Politics of Industrial Relations (London: Macmillan, 1977).  
<sup>6</sup> Colin Crouch, The Politics of Industrial Relations (London: Fontana, 1979).

For an example from the field of labour regulation in the nineteenth century, see Howard P. Marvel, 'Factory Regulation: A Reinterpretation of Early English Experience', Journal of Law and Economics, Vol. 20, 1977, pp. 379-402.

Finally, we may pose the question whether our study of wartime legal controls on industrial relations can shed light on questions pertaining to the regulation of modern, peacetime industrial relations. Since the late 1960s, different governments have attempted, with little success, to impose a restrictive legal framework on an essentially voluntarist system of British industrial relations. Some initiatives have proved spectacular failures such as Barbara Castle's white paper, In Place of Strife in 1969<sup>7</sup> or the Conservative government's Industrial Relations Act 1971.<sup>8</sup> More recently, the Employment Acts 1980 and 1982 have sought to inhibit trade union militancy by both limiting drastically the scope for lawful industrial action, including picketing and blacking activities, and by removing from trade unions their historic immunity from liability for damages (and indeed from liability for contempt of court orders to obey labour injunctions). Research published in 1983 seems to suggest that while the 1980 Act may have stiffened management authority in the face of trade union demands (while there still prevailed a powerful culture of 'law avoidance'), the most significant influence on industrial behaviour was probably the economic recession.<sup>9</sup> Such a finding supports the view of Kahn-Freund that the pattern of industrial behaviour, like the 'welfare' of workers,<sup>10</sup>

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<sup>7</sup>See Peter Jenkins, The Battle of Downing Street (London: Charles Knight, 1970)

<sup>8</sup>See Brian Weekes et al., Industrial Relations and the Limits of Law (Oxford: Blackwell, 1975). Some industrial relations academics still look back nostalgically on an opportunity lost. See E.H. Phelps Brown, The Origins of Trade Union Power (Oxford: Clarendon Press, 1983) ch.XI, 'The Attempt to Impose Order: the Legal Code of 1971'.

<sup>9</sup>Peggy Kahn, Norman Lewis, Rowland Livock and Paul Wiles, Picketing: Industrial Disputes, Tactics and the Law (London: Routledge & Kegan Paul, 1983). But cf. W.E.J. McCarthy, J.W. Durcan and G.P. Redman, Strikes in Post-War Britain (London: Allen & Unwin, 1983) who argue that political explanations for Britain's strike pattern, such as labour legislation, are more significant than economic ones, such as the level of employment.

<sup>10</sup>Otto Kahn-Freund, Labour and the Law, 3rd ed., edited by P.L. Davies and Mark Freedland (London: Stevens, 1983), p. 13.



"... depends in the first place on the productivity of people's labour, which in turn is, to a very large extent, the result of technical developments ... in the second place on the forces of the labour market on which the law has only a marginal (though not a negligible) influence... [and] thirdly on the degree of effective organisation of the workers in trade unions to which the law can again make only a modest contribution."

Indeed, elsewhere, Kahn-Freund has opined that,<sup>11</sup>

"Many people have something like a magic belief in the efficacy of the law in shaping human conduct and social relations. It is a superstition which is itself a fact of political importance, but a superstition it is all the same. I am not suggesting that the threat of legal sanctions cannot create a marginal motive determining conduct, but where there are strong forces or traditions favouring a pattern of action such as the sudden spontaneous strike, the role which the law can play in improving the situation, though not negligible, can never be decisive."

The law can, of course, be decisive in individual instances such as in the dispute involving the National Graphical Association at Warrington in the winter of 1983 when the infliction of massive fines amounting to £725,000, plus the freezing of the union's remaining assets, compelled the executive to call off their industrial action against a local printing firm. But it would be a foolish and unsubtle commentator who would seek to infer from single episodes such as this, the validity of a more general positive proposition linking law with the preservation of 'order' and with the elimination of conflict in industrial relations.

Our own study seeks to emphasise the complexities and paradoxes which surrounded government efforts during the First World War to employ the munitions code to regulate industrial relations in accordance with the exigencies of the war emergency. We will, in fact, argue that 'conflict management' was a key ingredient characterising the proceedings of the Glasgow munitions tribunal. Indeed, as

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<sup>11</sup> Ibid, 'Industrial Relations and the Law - Retrospect and Prospect', British Journal of Industrial Relations, Vol. 9, 1969, pp 301-16, at p 311.

those who have researched the impact of the Employment Act 1980 on industrial behaviour have observed,<sup>12</sup>

"Short of outlawing trade unions<sup>13</sup> and/or reproducing outright wage slavery, every modern industrial state is in the business of institutionalising conflict. The Employment Act is a minor contribution to that process."

Moreover, they continue, the process of institutionalisation will include "persuasion, bribery, direction and all manner of means more or less subtle".<sup>14</sup>

It is in the light of this understanding that our own study, located within a wholly different context of war, militancy, radicalism as well as patriotism, inflation and full employment, may yet, we hope, offer glimpses of insight to analysts of present-day industrial relations.

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<sup>12</sup>Kahn et al., op. cit., p 191.

<sup>13</sup>The combined effect of the 1980 and 1982 Acts is, on paper at least, to deprive trade unions of most of the strike weapons they have used effectively in the recent past. The 'right to strike' is still preserved, but in a severely attenuated (and possibly in an irrelevant) form.

<sup>14</sup>Kahn et al., op. cit., p 192.



## CHAPTER ONE

### The Munitions Act: A Theoretical Perspective

#### Introduction

Some years ago, when reviewing James Hinton's study of the shop stewards' movement during the First World War,<sup>1</sup> Roger Davidson<sup>2</sup> sought to castigate the author for having characterised wartime labour controls as a component of the 'servile state'. His criticism was, indeed, more specific. For he took issue (as Iain McLean<sup>3</sup> had previously done) with Hinton's view of the Munitions Act as a weapon in a class offensive launched against the shop stewards' movement. Moreover, not only did Davidson reject Hinton's argument that the Act was,

"... designed to implement [a leading industrialist's] proposals for repressive labour controls and to reinforce the employers' control over their workers against the pressures of wartime full employment."<sup>4</sup>

He also repudiated the suggestion that such legal controls were "intended permanently to demoralise the labour movement".

Davidson's argument, by contrast, was that the Act was a "desperate expedient to facilitate labour supply", having emerged as the "logical outcome" of a departmental review within the Ministry of Munitions, of

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<sup>1</sup>James Hinton, The First Shop Stewards' Movement (London: Allen & Unwin, 1973)

<sup>2</sup>Roger Davidson, "The Myth of the 'Servile State'", Bulletin of the Society for the Study of Labour History, No.29, Autumn 1974, pp 62-7 (henceforth Davidson (1974a)). He developed his critique of Hinton in more detail in his paper, "Government Labour Policy, 1914-1916: A Reappraisal", Scottish Labour History Society Journal, No. 8, June 1974, pp 3-20 (henceforth Davidson (1974b)).

<sup>3</sup>Iain McLean, "The Clyde Workers' Committee, the Ministry of Munitions and the Suppression of the 'Forward': An Alternative View", Scottish Labour History Society Journal, No.6, December 1972, pp 3-25 (henceforth McLean (1972)).

<sup>4</sup>Davidson (1974a) op. cit., p 65. Quotations in this and the following two passages are also from Davidson's review article, ibid.

the munitions supply crisis. As the "last and not the first resort of wartime labour administrators" confronted with a manpower crisis, the statutory measures, Davidson insisted, lacked "repressive intent".

Of course, on closer examination, it can be shown that there is not necessarily any contradiction between the views of Hinton and Davidson on the wartime role of the Munitions Act (except in respect to whether the authorities directed their minds to the permanent debilitation of the labour movement). Thus Hinton's discovery of the existence of "repressive labour controls" is in fact not inconsistent with Davidson's interpretation that such coercive legal measures were indeed the "logical outcome" of those exhausting ministry enquiries which preceded the legislation. Similarly, the labour controls of the Munitions Act could be both a "desperate expedient to facilitate labour supply", as Davidson suggests, and "new and formidable weapons in the arsenal of the ruling class", as Hinton alleges.<sup>5</sup>

Yet our intention is not simply to assume the role of honest broker, attempting, in the spirit of public duty, to compose differences over rival interpretations of the Munitions Act. Our object is, rather, to shift the contours of debate to a new theoretical

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<sup>5</sup>The intentions of the authorities and of the employers in respect to long-term industrial developments remain a matter for controversy among historians. There is circumstantial evidence to the effect that employers viewed the wartime changes as an opportunity to advance deskilling in the post-war era. But the evidence is far from conclusive. It is also improbable that government officials, at the time of the enactment of the Munitions Act, were seriously considering the post-war reorganisation of an engineering industry bereft of trade union restrictive practices. They were, after all, devoting part of their energies to persuading trade unions that restrictive practices were to be restored at the conclusion of hostilities. The view that employers were intent on "regaining the ground lost" before the war is expressed in Keith Middlemas, Politics in Industrial Society (London: André Deutsch, 1979) p. 72. Moreover the Official History of the Ministry of Munitions observed that "More serious was the workman's suspicion that under cover of the Munitions of War Act, the employer was seeking to introduce changes which had long been matters of prejudice and controversy. See Official History of the Ministry of Munitions (henceforth OHMM) Vol. IV, Part II, p. 30. Cf, Hinton, op.cit., p 71, quoting an article in the employers' journal, the Engineer, for December 1915; also cf, "Some of the great captains of industry have openly avowed their intention of taking the opportunity to secure  
Cont'd/....



plane, made necessary, we believe, by a reconsideration of certain features not only in Hinton's analysis, but also in Davidson's presentation. Thus, to summarize briefly the thrust of this opening chapter, it will be argued that Davidson's characterisation of the war legislation as a non-repressive "desperate expedient" does in fact seriously underestimate the intention of the legislators, to "reinforce", as Hinton says, "the employers' control over their workers". Yet Hinton's approach is not free from criticism, for his emphasis on the struggle of the shop stewards' movement against the Munitions Act has the effect (even if not intended) that other labour targets of government compulsion, such as alleged "bad timekeepers", do not come so sharply into focus. Thus the Act was not aimed solely at preventing industrial disruption and obstruction in those engineering centres under the influence of the shop stewards' movement. Nor, specifically, was rank-and-file hostility to dilution the target for its attentions. For as McLean points out,<sup>6</sup> it was craft trades union officialdom, especially at the national level, which was more dangerously uncooperative in this respect. Moreover, as we shall suggest in chapter eleven, the Munitions Act was <sup>probably</sup> structurally incapable of mandating dilution. Nonetheless, not only was the Munitions Act a comprehensive code of employment controls, extending beyond dilution (if in fact it ever embraced this object) to include provisions to restrict labour mobility, to control wages and to eliminate strikes and other manifestations of factory indiscipline. Its jurisdiction reached out far beyond the confines of the engineering industry and encompassed a wide range of trades in building, mining and quarrying, chemicals, textiles,

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<sup>5</sup> (cont'd) permanently that autocracy in the management of their own concerns which has been temporarily given them under the Munitions Acts". See New Statesman, September 2, 1916, p 509. The problem of separating genuine intention from rhetoric still, however, remains.

<sup>6</sup> McLean (1972), op. cit., p20

clothing, paper, wood, leather, transport and public utilities, as well as engineering, shipbuilding and iron and steel manufacture.<sup>7</sup> Thus by July 1918, as can be seen from Table 1.1, almost five million persons were engaged on "Government work", of whom less than half were employed in the metals sector, which presumably included shipbuilding.<sup>8</sup> Therefore, to concentrate on engineering is to obtain only a partial vision of the impact of the Munitions Act.

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<sup>7</sup>See OHMM, Vol. VI, Part IV, pp 47, 52-3, Tables XIII(c), XVI and XVII.  
<sup>8</sup>The term "Government Work" is, of course, broader in scope than "munitions work" as popularly understood. However as the Official History observed, "To attempt to state accurately the number of people employed on the 'manufacture of munitions' at different periods of the war is impossible. The term 'munitions' has never been strictly defined, and it may be taken in the narrower sense to cover the manufacture of destructive munitions only, or it may be taken to include also all industries subsidiary and essential to the production of destructive munitions, such as the iron and steel trades, the manufacture of machine tools, etc. In its widest sense even, it may be taken to cover all occupations over which the control of the Ministry of Munitions was exercised, and even coal mining, transport etc., including thus every kind of work indirectly essential to the needs of war". See ibid, p 48. Broadly speaking, the legal definition of "munitions work", upon which the jurisdiction of the Munitions Act essentially depended, corresponded to this widest sense of the term, and therefore, it is suggested, approximated to the term "Government work". Cf T.A. Fyfe, who advised that "... all work which is designed to aid the successful prosecution of the war is munitions work or may be made so by orders". See T.A. Fyfe, Employers and Workmen under the Munitions Acts, 3rd edition (London and Glasgow: William Hodge & Co., 1918) p. 20. Fyfe was a Glasgow sheriff and prominent chairman of the munitions tribunal. He was perhaps the most outstanding legal ambassador of the Act during the war. The copy of Fyfe's book consulted by the present writer was Fyfe's presentation copy to Lloyd George, which is in the special collections section of the library at the University of Kent at Canterbury.



Table 1.1

TOTAL WORKPEOPLE EMPLOYED ON GOVERNMENT WORK.

INDUSTRIES.	JULY, 1915.		JULY, 1916.		JULY, 1917.		JULY, 1918.	
	Numbers Employed on Government Work.	Percentage to Total Numbers Employed	Numbers Employed on Government Work.	Percentage to Total Numbers Employed	Numbers Employed on Government Work.	Percentage to Total Numbers Employed	Numbers Employed on Government Work.	Percentage to Total Numbers Employed
Building .. .. .	141,000	19.8	207,000	36.4	219,000	45.1	216,000	46.1
Mines .. .. .	299,000	28.1	561,000	52.3	656,000	59.8	676,000	65.7
Metals .. .. .	1,297,000	73.0	1,694,000	81.6	1,996,000	87.0	2,220,000	92.0
Chemicals .. .. .	79,000	37.8	156,000	59.4	185,000	65.0	169,000	63.6
Textiles .. .. .	385,000	26.6	344,000	24.5	422,000	31.6	492,000	39.8
Clothing Trades .. .. .	206,000	23.0	143,000	17.2	148,000	19.1	194,000	25.8
Food, Drink and Tobacco .. .. .	68,000	12.7	62,000	11.8	68,000	14.1	93,000	19.5
Paper Trades .. .. .	35,000	10.5	44,000	13.2	61,000	20.9	76,000	25.5
Wood Trades .. .. .	92,000	35.8	92,000	36.7	116,000	48.2	138,000	55.9
Other Trades .. .. .	168,000	38.6	175,000	42.4	194,000	48.1	208,000	51.6
Total Industries (under private ownership) .. .. .	2,770,000	36.1	3,478,000	44.9	4,068,000	52.8	4,482,000	59.0
Government Establishments .. .. .	157,000	100.0	277,000	100.0	449,000	100.0	482,000	100.0
Total Industries (including Government Establishments) .. .. .	2,927,000	37.3	3,755,000	46.8	4,517,000	55.3	4,964,000	61.5

Source: Official History of the Ministry of Munitions, Vol. VI, Pt IV, p 47, Table XIIIc.

But in another respect, to conceive of the Munitions Act as a weapon against recalcitrant workmen is to ignore the intention of the legislators to strike also at the freedom of employers to pursue their industrial activities unhindered. Thus while on the one hand Davidson merely glosses over this aspect, and thereby fails adequately to locate the statute within a valid theoretical perspective, Hinton's chosen framework for analysis, on the other hand, prevents his addressing the question at all. For his presentation of the shop stewards' perspective on the wartime state is scarcely the most promising vehicle upon which to mount an employers' critique of the Act. Of course, one must acknowledge that workers rather than employers were far more likely to incur the disciplinary wrath of the Munitions Act, and certainly no employer was deported for allegedly having hindered munitions output. Nonetheless, together with a battery of Defence of

the Realm Act (DURA) regulations, the Act did attempt to curb the traditional freedom of employers where that freedom was considered by the authorities to pose a danger to the "national interest". Employers, for example, complained that the Munitions Act was operating unevenly as between one firm and another, enabling some uncontrolled firms to benefit from more favourable market conditions at the expense of other companies controlled under the Act. Thus as well as illuminating aspects of inter-class conflict, the administration of the Munitions Act, as we shall see, reveals a little of intra-class conflict within the industrial capitalist class. Indeed, as the New Statesman pointed out in 1917, only three classes of capitalists, the railway shareholders, the sugar merchants and the landlord class, found their prices controlled in the "national interest", whereas, in addition to the notorious case of the shipping companies,

"... the corn merchants and millers, the meat companies, the oil trusts, the curious little rings that control the various metals, the munition-making and Army equipment firms; the corn and cattle and dairy farmers; the colliery entrepreneurs and coal dealers; and last but not least, the bank shareholders,"<sup>9</sup>

were free to indulge in profiteering, probably to the extent, estimated the New Statesman, that "as much as 1000 million pounds have been extracted from the consumers merely in increased prices." Of course, it concluded,<sup>10</sup>

"These three [controlled] sections of the capitalist class may naturally ask why they alone (for the limitation of coal prices was derisive) should have been deprived of the "legitimate" fruits of their "enterprise", or why a similar measure should not here been meted out to their fellow-capitalists."

Thus divisions between finance capitalists and industrial capitalists

<sup>9</sup>New Statesman, July 28, 1917, p 388  
<sup>10</sup>Ibid.



on the one hand and, on the other, between finance capitalists with investments in munitions firms and those investing in other outlets might even be exposed in the glare of the Munitions Act, with its provisions for profit limitation within controlled establishments.<sup>11</sup>

Therefore, in the light of our previous remarks which dispute Davidson's belief that the Munitions Act was not "repressive"; in the light, moreover, of our proposition that the "targets" of the Act included not only munitions workers from a vast range of industries apart from engineering, but also extended to the employers themselves, we would offer the following interpretation. First, there did indeed occur during the war a "ruling class" offensive mediated through legal controls, the object of which was in some respects to strengthen the power of employers over their workforce. Second, however, this offensive was conducted, not according to a blueprint for the 'servile state', by an accommodating government at the behest of employers, as Davidson rightly points out when he demonstrates that civil servants, rather than businessmen, imported into government, determined labour policy criteria.<sup>12</sup> The legislative campaign, far from being a reflection of a wholly undoctrinaire, pragmatic and empirical war collectivism as Davidson implies, is instead, better understood as one of the products of a gradually evolving, though never uncompromising, corporatist strategy. It is therefore from the perspective of corporatist theory that one can more sensitively grasp the nature of the policies eventually pursued by government after innumerable set-backs and false

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<sup>11</sup> For intra-class conflict within contemporary capitalism, see F. Longstreth, "The City, Industry and the State", in Colin Crouch (ed.) State and Economy in Contemporary Capitalism (London: Croom Helm, 1979) ch.5.

<sup>12</sup> No doubt there was a degree of overlap of objectives, but it fell short of an identity of interests on labour questions. Moreover, as Wrigley has recently pointed out, "There was also concern that businessmen in the ministry [of Munitions] were exploiting the opportunity to advertise themselves and their firms." As a result, Lloyd George sought to ensure that ministry correspondence contained the names of career civil servants, not those of the businessmen temporarily recruited to the departments. See Chris Wrigley, "The Ministry of Munitions: an Innovative Department", in Kathleen Burk (ed.) War and the State (London: Allen & Unwin, 1982) ch. 2, at p.42.

starts, in its desperate effort to secure military victory.

As Panitch has recently observed,<sup>13</sup>

"Although the varieties of corporatist theory are many, the common premise was that class harmony and organic unity were essential to society and could be secured if the various functional groups, and especially the organisations of capital and labour, were imbued with a conception of mutual rights and obligations somewhat similar to that presumed to have united the medieval estates in a stable society. Accordingly, corporatist programmes advocated a universal scheme of vocational, industrial or sectoral organisation, whereby the constituent units would have the right of representation in national decision-making, and a high degree of functional autonomy, but would have the duty of maintaining the functional hierarchy and social discipline consistent with the needs of the nation-state as a whole. A limited organisational pluralism, generally operating under the aegis of the state as the supreme collective community, would guarantee the major value of corporatism - social harmony."

It is clear that during the course of the war, the central state department, the Ministry of Munitions, certainly preferred, even if it did not always zealously seek, to preserve for itself a monopoly of policy-making in the belief that it alone could authoritatively determine the national interest. In this respect, the "right of representation in national decision-making", to which Panitch refers, might otherwise have been conspicuously absent from this wartime variant of corporatism, had not a "limited organisational pluralism" shown itself powerful enough to compel even the state to engage in "bargained corporatism",<sup>14</sup> with the trade unions over distributional, and to a limited extent over production, questions.

Thus, as conceptualized in the present study, wartime corporatism in Britain proceeded upon the footing both of a tightly controlled and disciplined labour force and a similarly regulated network of

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<sup>13</sup> Leo Panitch, "The Development of Corporatism in Liberal Democracies", Comparative Political Studies, Vol. 10, 1977, pp 61-90, at p 61.

<sup>14</sup> A term employed by Colin Crouch, who distinguishes it from "statist corporatism" where the state (self-evidently) refuses to engage in such horse-trading. See Colin Crouch, Class Conflict and the Industrial Relations Crisis (London: Heinemann, 1977); ibid, The Politics of Industrial Relations (London: Fontana, 1979).



employers. For the latter, as well as the former, were to be subject to centralized direction or imposed standards, emanating from bureaucratic elites, with the objective of securing order in industrial relations. Thus,

"In order to minimise the disruption to the national economy caused by the explosive tendencies within pluralist systems, the state succumbs to the temptation to regulate the employment relationship through law, thus by-passing the structures of joint regulation by management and unions. This kind of regulation differs considerably from the liberal floor of rights approach because it constitutes a general attempt to subject capitalist discipline to the rule of law. It involves the filtering and transformation of customs and works rules to the status of legal norms, and the supervision of the exercise of managerial prerogative by legal institutions associated with the state."<sup>15</sup>

As Hinton has shown, however, the 'servile state' (as distinct from corporatism) represented, according to Hilaire Belloc,

"... the use of state power in the direct service of private capital... the establishment of compulsory labour among an unfree majority of non-owners for the benefit of a free minority of owners."<sup>16</sup>

It is indeed at this point that any cautious attempt to detect the gradual emergence of the servile state from the repressive structures of wartime controls meets with difficulties. For any approximate application of Belloc's definition (supra) to emergency regulations, such as was perceived at the time by the shop stewards' movement, would require to hold that the employing class during the war remained unfettered in the pursuit of their activities, and merely fed off the benefits which selective nationalization offered private capital. Of course, in one crucial respect, private industrial capital did benefit from state intervention whether by outright national-

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<sup>15</sup> Hugh Collins, "Capitalist Discipline and Corporatist Law - Part I" Industrial Law Journal, Vol. 11, 1982, pp 78-93 at p. 82. It should, however, be noted that a corporatist rule of law is a highly ambiguous, perhaps contradictory, concept. See infra.

<sup>16</sup> Hinton, op.cit., p. 45.

ization (which tended to leave the same personnel as managers) or simply by state dictation. Thus state direction of munitions production did in fact set out to achieve the object of curbing chaotic, reckless, futile and indeed dangerous competition during the war. For if the invisible hand, in which industrialists had traditionally reposed their faith, had been left undisturbed, then who could have denied that the "free minority of owners", sheltered by Belloc's 'servile state', would have faced a less pleasant prospect at the hands of the victorious Prussians? Yet the price of industrial freedom to be obtained after the war, was eternal state vigilance and direction during it. Thus even were one to recognise the subtlety and attractiveness of the syndicalist argument that "State Ownership was the final word in capitalist domination",<sup>17</sup> it is nonetheless crucial to acknowledge that during the war itself, the "capitalist" was, in theory if not always in practice, as subservient to state officialdom as was the munitions worker.

The state's task, therefore, was to mobilize the industrial resources of the country at war under the emotional but ambiguous banner of the "national interest". If the direction of capital consequently entailed the sacrifice of the "best interests" of independent firms by nationalization or, more commonly, by prohibitions on trading or by other restraints on previously "free" market activity, then the prospect of conscription of industry in place of "business as usual", though in the final analysis a not unhappy one for industry, was unavoidable during the war. Allied, finally, to measures entailing the disciplining of labour - or better still, the self-disciplining of labour by the trade unions - the distinctive brand of wartime corporatism thus sought

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<sup>17</sup>Ibid, p. 47, citing the Socialist, September 1916.



to advance those policies compatible with the long-term survival of private capitalism.

Yet while adopting the perspective of corporatism as an analytical framework within which to examine government labour (and indeed certain other market) controls during the war, we must at the same time remain alive to the normative limitations of the concept. For pluralist elements, including collective bargaining institutions and the stock exchange, still manifested themselves to hold at bay industrial conscription or even to preclude the absolute conscription of riches.<sup>18</sup> Thus, sensitive of the complexities, we can expose, and hopefully render intelligible, many of the apparent contradictions inherent in the state's administration of the Munitions Act.

Among the anomalies, we might note first, the peculiar composition of financial, industrial and labour controls within the one statute, which reflects an integrated and comprehensive strategy indicative of the unitary perspective with which corporatism may be identified. On the other hand, a limited autonomy in respect to some aspects of wage determination, trade union recognition and even strikes (once 21 days had elapsed without the Board of Trade activating steps towards a settlement) pointed to the perpetuation of a residual pluralist industrial relations. The many concessions which the government undertook to grant to trade unions in respect to the enforcement of the Act signifies the importance, in corporatist thought, of ends rather than means. Thus it may be argued that "bargained" corporatism vied with "statist" corporatism in informing the strategies of the

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<sup>18</sup> This latter feature, is perhaps a testimony to the strength of finance or rentier capital during the war rather than of industrial capital. For an example, see Royden Harrison, "The War Emergency Workers' National Committee", in A. Briggs and J. Saville (eds.) Essays in Labour History, Vol. 2, 1886-1923 (London: Macmillan, 1971) p 247 on the return on War Loans.

institutional parties to labour regulation. Indeed, we may observe, at this point, that such bargaining manoeuvres are also symptomatic of the fragile base of corporatist strategies which aimed at compelling pluralistically inclined institutions to adhere to unitarist objects and modes of behaviour but whose <sup>framers</sup> recoil, both pragmatically and instinctively, from the use of absolutist means to attain such ends.

But, third, there is the problematic surrounding the role of law (one might even say surrounding the rule of law) in a corporatist environment. For such a strategy does indeed have implications for the type and character of law upon which the state chooses to rely in order to achieve its objectives. But more than this. For during the war, the enforcement and interpretation of corporatist law, embodying the government policy of fostering what the sociologists, Pahl and Winkler have recently described, in the context of the mid-1970s, as the goals and values of "unity, order, nationalism and success",<sup>19</sup> was entrusted at the local level to legally trained judges plucked from a profession which, for centuries, had proclaimed and cherished its independence from the executive arm of the state. The advent of corporatist controls therefore presented challenges to the chairmen of the munitions tribunals in the localities to demonstrate the object of their loyalties. Did they still adhere to the traditional tenet that law was no respecter of persons, even if that person were Lloyd George? Or was the pattern of tribunal interpretation and enforcement under the Munitions Act (particularly in the case of the Glasgow tribunal, with which this study is principally concerned), informed by those characteristics of corporatism, that is, "unity, order, nationalism

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<sup>19</sup>For the use of these terms within the corporatist "syndrome", see R.E. Pahl and J.T. Winkler, "The Coming Corporatism", New Society, October 10, 1974, p. 72.



and success", cited above? Thus the delineation of the tribunal chairmen's "proper" judicial role was yet another arena wherein contradictory impulses might be, and, as we shall see, were thrown up by the introduction of wartime corporatist imperatives.

In consequence, the "system contradiction" (to borrow a term employed in recent work on the relations between the state, advanced capitalism and industrial relations)<sup>20</sup> not only between corporatist and pluralist approaches to industrial relations, but also between corporatist law and a liberal-democratic tradition of legal adjudication, constitutes a major thread running through this study.

#### Lacking Repressive Intent?

Having outlined briefly the theoretical perspective to be employed in this work, we are now in a position to elaborate on the points to be argued. The first matter concerned Davidson's allegation that the Munitions Act lacked repressive intent, and that the resulting injustice to labour was unintentional. However, given that the Oxford English Dictionary defines "repress" as "check", "restrain", "keep under" and "quell", as well as the more forceful "suppress", the obvious point might be made that it is difficult to see how, for example, the Ordering of Work rules for controlled establishments lacked "repressive intent". Indeed, as A.J. Jenkinson, in drafting one of the crucial sections of the Official History of the Ministry of Munitions, informed his general editor, G.I.H. Lloyd,

"I have substituted "the principle of the Munitions of War Act" for "their policy of repressive action" - an innocuous phrase which means the same thing! You will remember that we looked at the file."<sup>21</sup>

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<sup>20</sup> See Dominic Strinati, "Capitalism, the State and Industrial Relations" in Crouch (ed.) op. cit., Ch.6; ibid, Capitalism, the State and Industrial Relations (London: Croom Helm, 1982).

<sup>21</sup> [PRO] MUN 5/328/160/R.2, "Ministry of Munitions Officials to G.I.H. Lloyd re Constitution of Official History of Ministry of Munitions: re IV, Part II". It is perhaps worthwhile to recall that Davidson's exact words were "... the Act was the logical outcome of a series of

Moreover, from August 1915, the Ministry postbag began to be swelled by requests from numerous employers, hitherto antagonistic to the idea of "control" of their private businesses from without,<sup>22</sup> that their firms be scheduled as controlled establishments under the Act. For they well recognised that both the limitation on profits and what they also perceived as the stimulus to wage demands arising from the declaration of control, were outweighed by other factors. Thus the legal injunction to trade unionists to remove their restrictive practices and the licence to employers to impose tighter factory discipline in the wake of the issuance of a control order, were more powerful temptations to many firms. Indeed, there is no doubt that the government's creation of the institution of the controlled establishment was designed partly, perhaps even mainly, to enable employers to check bad timekeeping without diminishing output by dismissals or suspensions, as well as to allow them to insist on the removal of restrictive workshop practices without having to resort to protracted and possibly fruitless engagements with full-time trade union officials.<sup>23</sup>

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<sup>21</sup>(cont'd) memoranda on the problems of munitions labour supply submitted by Llewellyn Smith and Beveridge... Moreover, these memoranda do not betray any repressive intent." See Davidson (1974a) op.cit. pp 65-6.

<sup>22</sup>It even appeared that building contractors employed on the construction of workmen's houses at Rosyth Dockyard resisted scheduling as controlled establishments on the ground that their navvies and labourers regarded control as denying them the freedom "to roam from work to work". Other similar firms which had been controlled found that as a result they were losing men who failed to lift their unemployment books and therefore could not be traced. Thus it appears that employers were prepared to connive with their employees in some circumstances to avoid becoming a controlled establishment. See MUN 5/79/340.1/2, "Notes on the application to controlled establishments of orders under section 7 by F.M. Cornford, July 14, 1915 - December 2, 1916". For the significance of unemployment books for the administration of the Munitions Act, see OHMM, Vol. IV, Part II, p.19.

<sup>23</sup>MUN 5/353/360/3, "History of Controlled Establishments, March 1915 to April 1917: Principles of Control, prepared by Captain F.M. Cornford, August 2, 1917." It should be noted that the restrictive practices in question were not exclusively, perhaps not even predominantly, concerned with dilution.



Thus a leading official at the Ministry of Munitions, W.J. Larke, summarised (if inelegantly) one of the motive factors in persuading the government to introduce the institution. The controlled establishment, he pointed out, offered the opportunity,

"... to prosecute labour for maintaining restrictive practices or any other action calculated to reduce output, such as abstention from work without reasonable cause, etc., before a munitions tribunal, thus ensuring better discipline of labour at a time before war conditions had permeated the whole community, and labour was still acting in accordance with the traditions that had obtained in peacetime."<sup>24</sup>

That factor was especially crucial, he added, in view of the gap between the productive capacity of industry at the time, and the military needs then current.

Within this context, therefore, individual firms appealed to the Ministry to resolve their labour difficulties by scheduling them as controlled establishments. Thus small firms such as Clarke's Crank and Forge Co. Ltd. of Lincoln argued that deliveries would be improved if the management could "deal with their labour under the conditions of control",<sup>25</sup> while the Great Central Cooperative Engineering & Shipbuilding Company of Grimsby was advised by the Ministry's labour officer to apply for a control order to enable it "to avoid friction over the employment of non-union labour" (here indeed is an example of system contradiction, with the government seeking the stamp of official union approval to a statutory measure indirectly sanctioning non-unionism). In the case of the large public utility, the South Staffordshire Mond Gas (Power and Heating) Company, control was sought in the wake of serious labour troubles, in order that the management might "secure

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<sup>24</sup>MUN 5/353/360/4, "Notes on Controlled Establishments, by W.J. Larke, August 25, 1917".

<sup>25</sup>This and the following examples are taken from MUN 5/353/360/3, supra.

more power over their men",<sup>26</sup> a justification for control advanced also by other utilities after 1916. Similarly, in September 1915, the Ministry's labour officers in South Wales advised that a number of local steel companies ought to be controlled "where the men were restive". The optical firms, likewise, were also considered by the Ministry as ripe for control in order "to secure better control over the men generally."

In the wake of this evidence, therefore, there can surely be little doubt as to one of the motives informing the Ministry's labour policy. In particular, the creation of a custom-built institution, the controlled establishment, was primed to advance that repressive policy. Thus far from being the unintended consequence of a "last resort" decision to legislate, the legal regimentation of labour was consciously and expressly designed to underpin employers' control over their workforce. In this respect, Hinton's interpretation is nearer to the truth than is Davidson's.

#### The "Target" of the Munitions Act

In the light of the foregoing, it cannot be maintained that the only target of the ministry's repressive endeavours, for which the Munitions Act was prepared, was the shop stewards' movement. And indeed, Hinton did not suggest there was an exclusive focus. Certainly, the government's determination to suppress labour unrest and obstructionism was more in evidence in important munitions areas such as Glasgow or in other centres influenced by militant rank-and-file organisation and where large strike movements occurred. But the government's efforts to stifle industrial disorder were not confined either to the major centres of munitions production or indeed to strikes

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<sup>26</sup> Cf., the idyllic picture painted in Wilfred Beswick, Industrialist's Journey, (Harrogate: privately published, 1961) Ch.VIII. Dealings with the ministry over technical contracts generated acute difficulties.

or to hostility to dilution. In any case, the most serious troubles from the government's point of view were dealt with by DORA in addition to, or instead of, the Munitions Act, as occurred in the case of the Clyde deportations and the strike which accompanied them in 1916.

Indeed, the examples previously cited of those firms seeking scheduling as controlled establishments, were chosen specifically to illustrate the geographical diversity of unrest which prompted the ministry to reach for the Munitions Act. Tribunal returns from the four corners of the British Isles illustrate the obvious point of the pervasiveness of industrial non-conformity. Of course, we are not suggesting that the labour movement in Plymouth, or in Norwich or even in Dublin, threatened the success of the government's munitions programme. However, to a greater or lesser extent, industrial unrest throughout the country dislocated and interfered with munitions output, and as such, was the focus of repressive statutory measures, in addition, of course, to a wide range of other techniques of conflict "management."

But there is a further point, crucial to the theoretical perspective of the study. This is that, however imperfectly, the Munitions Act purported to embody restrictions on employers as well as on labour. As Davidson states,<sup>27</sup>

"Llewellyn Smith's main objective was to harness both labour and capital resources more effectively to the war effort and to the security of society as a whole."

Indeed it was; the idea of "control", for example, was originally associated, not with the suspension of trade union customs, but with the extinction of private work in engineering and shipbuilding. The ministry frequently had to fend off accusations from companies that the incidence of control orders was discriminatory and unfair either

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<sup>27</sup> Davidson (1974a) op.cit., p.66.



between competitors within a given trade group or between one trade and another. The number of firms controlled was constantly widened to repel these criticisms, even where there lacked any other industrial merit in controlling certain firms. Intra-class conflict was thus exposed as a focus for containment by the Munitions Act as well as inter-class conflict, though it did, of course, remain very much a side issue, closely hidden from public scrutiny. Nonetheless, as early as July 22, 1915, the Manchester Armaments Output Committee emphasised that controlled establishments would be under a disadvantage if they sacrificed the goodwill of private customers to turn to munitions work, while uncontrolled rivals were left free to pick up their private business.

Complaints of labour stealing, to which the Manchester committee had already drawn attention<sup>28</sup> - and, indeed, labour stealing prosecutions themselves - are further symptoms of intra-class differences illuminated by the operation of the Act.

Thus as Sheriff Fyfe of Glasgow sought to persuade his listeners during one prosecution of a firm of brassfounders, the Act "applied quite as drastically to employers as it did to workmen".<sup>29</sup> Even the larger controlled establishments in the city were not immune from Fyfe's verbal lashes. Thus the industrial giant, Beardmore's, for example, were fined £20 as a result of their foremen's attempts to lure workers away from other workshops, conduct which Sheriff Fyfe described, in moderate tones, as "bad cases of carelessness, if not of utter disregard of the Munitions Act..."<sup>30</sup> Of course, fines varying from £2 to £25 for labour poaching might not constitute a powerful deterrent against firms desperate for labour. But deterrence, though one object, was not the

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<sup>28</sup>OHMM, Vol. 1, Part IV, p. 39n.

<sup>29</sup>Glasgow Herald, October 28, 1915.

<sup>30</sup>Ibid, June 29, 1916.



sole aim. The ideological objective of promoting a "national", and not a self-centred purpose, could thus be mediated through this additional tactic.<sup>31</sup>

Perhaps this point receives emphasis from the fact that even trade unions sought the scheduling of firms as controlled establishments in order to protect the unions against the encroachment of employers, with the result that employers found themselves controlled contrary to their own wishes. Thus the unions organising in the railway workshops thought it worthwhile to incur the disabilities which control entailed for labour, in order to ensure that the companies were bound by the employers' guarantees of working conditions and of post-war restoration, provided for in Schedule II to the Act. In a small firm of coppersmiths in Burton-on-Trent, for example, the union agreed to the admission of women into the firm only if it became a controlled establishment subject to profit limitation, and to the employer's guarantee of restoration. In other respects, employers felt aggrieved at their treatment at the hands of government labour administration. Thus they consistently complained of lack of consultation over all sorts of matters, such as the decision to award the timeworkers' 12½% bonus in 1917 or the communication of the date of repeal of the leaving certificate scheme.<sup>32</sup> According to one employer,<sup>33</sup>

<sup>31</sup>For other case examples from Glasgow see ibid, December 1, 12, 1915; ibid, March 16, 1916; ibid, April 6, 20, 1916; ibid, May 18, 29, 31, 1916; ibid, August 16, 1916; ibid, October 5, 6, 18, 1916. For elsewhere, see ibid, September 11, 1915 (Greenock); ibid, January 5, 1917 (Edinburgh); ibid, August 2, 1917 (Edinburgh); ibid, October 4, 1915 (Hull); Engineer, September 3, 1915 (Metropolitan tribunal). In one case from the West Midlands, a firm unsuccessfully sought the remission of a fine of £15 imposed for labour stealing, arguing that through a "misunderstanding", it failed to attend the tribunal. See MUN 5/97/349/10. "Treasury correspondence re Fines imposed by the Munitions Tribunals", December 8, 1915 and February 11, 1916".

<sup>32</sup>Glasgow Herald, November 14, 1917. Cf, the complaint of "repeated exactions" from employers, in ibid, October 8, 1917.

<sup>33</sup>Ibid, September 25, 1917.

"At the present time, the payer of wages has hardly any voice in the fixing of them. This is done, for the most part, without any reference to employers by a Committee on Production which issues its decrees from time to time with a contemptuous disregard of the employers' interests or convenience, and evidently without knowledge of the details of factory administration".

This is of course a far cry from Hinton's claim that the ministry reflected businessmen's private objectives towards labour. Thus Wigham, in his history of the Engineering Employers' Federation, cites the local Huddersfield association to the effect that,

"Employers have had imposed upon them conditions and restrictions which in normal times would be unthinkable. They have been deprived of almost all freedom of action... In many...ways, the just rights of the employers have been ruthlessly put aside for the purpose of maintaining industrial peace".<sup>34</sup>

It was, perhaps, an understandable outburst of frustration, given the relative freedom with which employers were accustomed to conduct their affairs before the war. Yet no-one who reads even the secondary accounts of the control of business during the war, commencing with the takeover of the railways in 1914, through to the virtual nationalization of the mines in 1918; the bulk purchases of essential supplies; restrictions on dealing, especially in imports and exports; the directing, for example, of extra shipping tonnage into particular routes solely in order to keep down freights; and finally, the scrutiny by the Ministry of Munitions, through rigorous auditing and accounting methods, of companies' actual costs,<sup>35</sup> can conceive (despite the indecent haste with

<sup>34</sup>Eric Wigham, The Power to Manage (London: Macmillan, 1973) p.86.

<sup>35</sup>Though the effectiveness of such scrutiny should not be exaggerated. See Wrigley, "The Ministry of Munitions etc.", in Burk. (ed.) op.cit., at p.49. Cf. Sidney Pollard, The Development of the British Economy, 1914-1967, 2nd edn., (London: Edward Arnold, 1969) Ch.II, Pts (1) and (2).



which the wartime business controls were dismantled after the Armistice),<sup>36</sup> of the deliberate undermining or "repression" of labour solely for the aggrandisement of industrial capitalism.

Indeed intelligent labour "spokesmen" were inclined to accept such an analysis. Thus according to G.D.H. Cole, speaking in November 1916,

"A significant fact was that Government departments, e.g. the Ministry of Munitions, were now exercising greater control than formerly over raw materials, and so reducing the power of the capitalist manufacturer to exploit the community. The capitalist was being robbed by the State of his useful function as merchant and was becoming a mere supervisor of manufacture." <sup>37</sup>

Another spokesman whose constancy to the labour movement was, however, less permanent, was William Mosses who was, at various times during the war, secretary to the workers' side at the negotiations leading to the Treasury Agreement, general secretary of the United Patternmakers' Society, secretary of the Federation of Engineering and Shipbuilding Trades (FEST) and secretary of the National Advisory Committee on War Output. No doubt a "super-patriot"<sup>38</sup> (he later left the Labour Party and joined the Ministry of Munitions as a section director in the Labour Supply Department), his view was not an isolated one, even for trade unionists. Thus he insisted that,

"Employers are cribbed, cabined and confined to a much greater extent than are their workmen, especially as the abolition of clearance certificates will restore comparative freedom of movement to the workman. No one can now urge that the employer is master of his own house. The restrictions to which

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<sup>36</sup> R.H. Tawney, "The Abolition of Economic Controls, 1918-1921", Economic History Review, 1st series, Vol. 13, 1943, pp 1-30. Cf, Peter K. Cline, "Reopening the Case of the Lloyd George Coalition and the Post-War Economic Transition, 1918-1919", Journal of British Studies, Vol. 10, 1970-71, pp 162-75; ibid, "Winding Down the War Economy: British Plans for Peacetime Recovery, 1916-19" in Burk (ed.) op. cit. ch. 7.

<sup>37</sup> Fabian News, Vol. 28, December 1916, p 2. Contrast this with the views of Cole cited in J.M. Winter, Socialism and the Challenge of War (London: Routledge & Kegan Paul, 1974), Ch.5.

<sup>38</sup> Cf, Harrison, op. cit. p 220.

controlled establishments are subject are not known to the bulk of the workmen. Employers no longer have a free market for either buying or selling ... and altogether they are in the position of a manager to a concern under the absolute control of a State Department which knows little or nothing of the technicalities or difficulties of the industry it dominates." 39

Of course, the fact that, as Mosses himself admitted, the employers were doing "remarkably well from a financial point of view",<sup>40</sup> could not easily be hidden. Similarly, Robert Young, general secretary of the Amalgamated Society of Engineers (ASE) both acknowledged that, "In the main industries of the country, the employers of labour are under control",<sup>41</sup> but also confessed that,

"... there is an uneasy feeling that the demands of the employers are more readily considered and assented to than are the grievances of the workers."<sup>42</sup>

Thus fiscal efforts to restrict profiteering were always unconvincing to labour<sup>43</sup> which thoroughly distrusted the strength of the government's commitment to equality of sacrifice. Yet even if the government's motives, let alone its competence, were suspect, it remains the case, in some quarters at least, that,

"The war also taught the country to look at its national equipment in a new light, not as private property alone, but as the capital helping to provide the national income."<sup>44</sup>

Of course, the reification implied in this analysis disguises the corporatist lurch which undoubtedly occurred. But a paradigmatic

<sup>39</sup>Glasgow Herald, October 1, 1917.

<sup>40</sup>Ibid.

<sup>41</sup>Glasgow Herald, September 24, 1917.

<sup>42</sup>Ibid.

<sup>43</sup>Indeed unconvincing to business, according to the New Statesman, April 7, 1917, pp 6-7.

<sup>44</sup>Pollard, op.cit., p. 62. As the New Statesman remarked, "Some people have said in their haste that no self-respecting manufacturer would submit to such a regulation of "his own" business. But ought it any longer to be regarded as his own business?" See New Statesman, November 17, 1917, p 152.



shift, there nonetheless did take place, even if confined to a shift in management rather than in mode of production.<sup>45</sup> Thus it is important to appreciate the restrictions which the Munitions Act (and, of course, numerous other legal measures) entailed for employers. The Munitions Act undoubtedly offered the latter substantial advantages in disciplining their employees. Such was the intention of the ministry. The Act, however, also sought to subordinate employers' freedom of business activity to the attainment of a "national interest" determined by bureaucrats. That, also, was the intention of the ministry. Thus, in conclusion, as Lowe has observed,<sup>46</sup>

"On the trade union side it was often forgotten that even during the war, the Board [of Trade conciliation and arbitration section] antagonised employers as much as the unions and secured for labour important gains which would not necessarily have been won by the exercise of naked economic power. The Board strove to be "impartial", defending the 'national interest' in industrial disputes (according to Askwith) and preventing the exploitation of whichever side of industry was temporarily at an economic disadvantage (according to Beveridge)."

### Corporatism

We may now expand upon our argument that a corporatist approach is a more fruitful vantage point from which to analyse wartime labour controls than is the perspective of the 'servile state' adopted by the shop stewards' movement. We have already acknowledged that the employing class were far removed from orchestrating the enslavement of trade unionism, but affirm, nonetheless, that "repressive intent" was a hallmark of the Munitions Act. However, the path pursued by state

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<sup>45</sup>According to Wrigley, "The Ministry of Munitions, etc.", op.cit. pp 50-1, the managerial policies of the Ministry of Munitions "generally smack of tough efficient capitalism." In respect to labour policy, however, we clearly take a view which diverges from this characterisation.

<sup>46</sup>Rodney Lowe, "The Ministry of Labour, 1916-19: A Still, Small Voice?" in Burk (ed.) op.cit., Ch. 5, at pp 122-3.

administrators was to render both the working class and private industrial capital subservient to bureaucratically determined production objectives. Thus, in respect to the latter class, while private capital was undoubtedly sheltered and protected by state intervention, private industrial capitalism, with its concomitant market "freedom", found itself hedged by plentiful "forecasts, admonitions, warnings and directions for the reproof and correction of employers".<sup>47</sup> No doubt well rewarded in the sense that the contracts continued to roll in, many employers, harassed by departmental imperatives, no longer felt themselves masters in their own house. Thus resentment against state intervention in the sense that the state and not the owners directed - mandated - private activity, was not the exclusive property of the owners of labour power. Corporatist direction was responsible for ensuring that neither labour nor capital were infatuated by the bureaucratic embrace.

Corporatism has recently been rehabilitated within "respectable" academic discourse, following its supposed flirtation with fascist theory in the 1930s, and the concept can no longer be said to remain on the fringes of modern political discussion. Indeed, the term has already been applied by recent writers exploring the history of industrial relations from the 1880s. Thus Robert Currie, in his recent book, Industrial Politics,<sup>48</sup> refers to developments in the 1890s as prompting,

"... a higher sectionalism, a corporatism in which - as a compromise between ... full collectivism and the laissez-faire fragmentation of pure Gladstonian democracy - separate individuals would be grouped, organised and set to bargain."<sup>49</sup>

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<sup>47</sup>Glasgow Herald; September 25, 1917.

<sup>48</sup>Robert Currie, Industrial Politics (Oxford: Clarendon Press, 1979) pp 48-56.

<sup>49</sup>Ibid. p. 48.



Trade unions, under Webbian impulses, would thereby seek to expand beyond the mere monetary advancement of their members' interests until they were "coterminous with society", thus inaugurating a "system of corporatist 'industrial democracy'".<sup>50</sup> As an adjunct, the state would of course feature more prominently than hitherto in determining such matters as a statutory eight-hour day. Yet the vagueness of Currie's proposition renders it difficult to evaluate the significance of such proposals.

Currie does, however, also point to the existence of both "unitary" and "bipartite" corporatism, the former referring to that form of organisation where the joint determination of wages in "each productive sector" was by reference to the selling price of the product. Employers tended to dominate such arrangements and trade unions seemed somewhat superfluous, as would be inevitable where sliding scales appeared to eliminate the need for the articulation of an independent interest. By contrast, "bipartite" corporatism sought to institutionalise conflicts of interest in industrial relations and to encourage compromise in reaching settlements. In this formulation, however, it is difficult to understand, from a writer who is no Marxist, why the corporatist label is attached to a system more accurately described by Kahn-Freund as "collective laissez-faire",<sup>52</sup> that is, to the system of "free" collective bargaining pursued, apart from periods of incomes policy and wartime controls, throughout the twentieth century. Therefore, if we doubt the appropriateness of the term "bilateral" corporatism in the

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<sup>50</sup>Ibid, p. 50.

<sup>51</sup>Ibid, p. 52.

<sup>52</sup>For the origins of this term, see Otto Kahn-Freund, "Labour Law", in Morris Ginsberg (ed.) Law and Opinion in England in the 20th Century, (London: Stevens, 1959), pp 215-63.

circumstances in which Currie desires to employ that phrase, nonetheless, his resurrection of the notion of "unitary" corporatism to describe the government's wartime wresting of the control of industry, is more acceptable. Thus,

"... once the state determined to reorganise production on collectivist principles, it naturally adopted what it thought the most advanced case of collectivism among the examples familiar to it; and in Britain that case could be none other than unitary corporatism [which] denied the possibility of conflict of interests and vested overall industrial control, within each establishment, in the hands of the employers."<sup>53</sup>

Thus, bearing in mind the reservations expressed earlier regarding both the nature of the "class offensive", represented by the Munitions Act, and also the maintenance of pluralist spheres of activity, we would not dissent from employing the term "unitary" corporatism used by Currie to describe the organisation of the war economy.

By contrast, Middlemas prefers the expression "corporate bias".<sup>54</sup>

He explains that the,

"... corporate role of the state, [is] inspired by an underlying aim of preventing crisis and conflict by arranging a continuous series of compromises between oligarchic interest groups..."<sup>55</sup>

As a consequence, the power of individuals and electorates is diminished vis-a-vis politicians and government officials; class conflict, especially over wages and unemployment arrangements, is blunted; and, as a by-product, interest-group institutions become subject to internal fissures. In the context of the First World War, Middlemas argues, the government was compelled to elevate trade unions and employers' associations,

"... to a new sort of status: from interest groups they became 'governing institutions'... [which] came to share some of the political power and attributes of the state, itself averse to admit representative bodies to its orbit rather than face a free-for-all with a host of individual claimants."<sup>56</sup>

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<sup>53</sup>Currie, op. cit., p. 92.

<sup>54</sup>Middlemas, op. cit., p. 20.

<sup>55</sup>Ibid, p. 13.

<sup>56</sup>Ibid, p. 22.



Such political developments, "when for the first time a British government was forced to bargain for national public support",<sup>57</sup> were deemed inescapable if military annihilation by the enemy were to be averted. For with the discovery by the "political nation" that the "real nation" did not always share its conception of the national interest, the former, in order,

"... to avoid political breakdown, was consequently forced to find ways of maintaining its authority, and the national interest which that implied, by fresh compromises."<sup>58</sup>

Yet since the "governing institutions" thereby presumed to imbibe a conception of the national interest which no longer appeared to correspond to their sectional or class interests, their constituencies, consequently, became more susceptible to revolt; a development over which both government and "governing institutions" could exert only partial control during the war.

As a conceptualization of industrial politics during the war, "corporate bias" does of course capture the sense in which the pursuit of sectional or atomistic competition was abrogated for the duration. It also, correctly, points to the institutionalised "bargaining" conducted on a grand scale between the government and bodies such as the Engineering Employers' Federation (EEF), the Shipbuilding Employers' Federation (SEF) and various labour organisations. Yet it may be argued that such bodies were far from being fully-fledged governing institutions in the national sense. Indeed, the extent to which they were even in a position to "govern" their own component elements is open to debate. Moreover, where such bodies were "bargaining", in other words, where a system of bargained corporatism prevailed, such bodies were often found to be negotiating with the government with

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<sup>57</sup>Ibid, p. 19.

<sup>58</sup>Ibid, p. 14.

their backs to the wall. The government may have been compelled to bargain, but it could always, in the final analysis, play the trump card (had it not been so respectful of financial rectitude even in the depths of world war) by wholesale nationalisation and by comprehensive industrial conscription.

Indeed, this raises a more fundamental objection to Middlemas' characterisation. His preoccupation with "governing institutions", and with crisis avoidance by means of bargained compromise, ignores the extent to which dictatorial powers, especially over labour (but to an extent over industrial capital also) were being exercised by government. His "corporate bias", in fact, fails adequately to address the directive role of the state, with its propensity to monopolise the planning and implementation of policy towards the war economy. Naturally, government meetings with employers and trade unions abounded. For the cooperation of capital and labour was indispensable to the war effort. But just as government labour policy, as Davidson has indicated (supra), was kept out of the hands of the businessmen drafted into the Ministry of Munitions, so, whenever major government retreats in their negotiations with trade unions did occur, such as in the case of plans to extend dilution to private industry, or in the case of amendments made to the 1915 Act, these were surely prompted only by massive displays of rank-and-file industrial action rather than by the persuasive eloquence of trade union leaders "bargaining" with government. Thus a peculiar mix, predominantly of statist corporatism, but including bargained corporatism and, indeed, also a residual and attenuated pluralism, must surely be recognised to have exercised an influence over the organisation of the war economy.

Given the usages of the terms "unitary" corporatism and "corporate bias" by Currie and Middlemas, respectively, with which to describe the industrial politics of the war, and in the light of our own comments



on the applicability of the terminology to the war period, it will obviously be sensible at this stage to offer what we consider to be a more appropriate working definition of, or perhaps more accurately, a descriptive guide to wartime corporatism which can be pressed into general service in this study. Thus, building upon Panitch's more tentative and theoretical definition cited earlier, corporatism, at an operational level, has been said to constitute a,

"... comprehensive economic system under which the state intensively channels predominantly privately owned business towards [the] four goals..."<sup>59</sup>

of order, unity, nationalism and success. Though such features as "order" and "success" sound platitudinous (and indeed the pursuit of "success", in particular, seems a somewhat self-evident aim of any social, economic or political strategy), their distinctive applicability to wartime corporatist policy must be explained. Thus, taking these characteristics in turn, it is argued that the pursuit of order entails the elimination of the "anarchy" of the market. For the product market must necessarily be directed in an orderly, rational and efficient fashion, a task undertaken no longer solely on the initiative of private capitalists or by virtue of the invisible hand whose failure precipitated the crisis in question (in this case, the munitions crisis). In effect, private control is replaced in the corporatist state by that of rational-bureaucratic experts. Patriotic ("nationalistic") trade union leaders well recognised this point. Thus commenting on the entry on to the statute book, of the Munitions Act, John Hill, general secretary of the Boilermakers' Society, remarked that it represented,

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<sup>59</sup>Pahl and Winkler, op. cit.

"... our latest national confession that uncontrolled private enterprise and production for profit has hopelessly failed us, as it always has done when our need was greatest."<sup>60</sup>

Hill, however, pointedly stopped short of heralding a new socialist experiment, while recognising that private capitalism was no longer permitted to pursue its traditional aims.

The labour market, also, could not escape drastic restrictions designed to eliminate "irrational" disorder through strikes or chaotic bargaining structures. Strikes were therefore "logically" prohibited. "Excessive" wage claims which threatened unity and success were to give way to rational settlements. This was preferably to be achieved by joint voluntary regulation within the given corporatist framework, thus paying lip-service to the maintenance, within narrowly defined parameters, of pluralist pressure group activity. John Hill again:

"All our usual machinery for dealing with grievances and questions in dispute will be continued, i.e. reporting to the foreman, calling the district delegate, meeting employers in conference, etc."<sup>61</sup>

In the event of failure to agree, however, resort to trial of strength was forbidden. Instead, the "inexpensive experts" of the Committee on Production or the Board of Trade's arbitrators were ultimately to impose an award. As the Webbs had earlier remarked,

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<sup>60</sup> United Society of Boilermakers [USB], Monthly Report, July 1915, pp 10-11. The same item was repeated in ibid, November 1915, pp 13-14 on the ground that, "A good many who have never read the Act have condemned it because of some harsh and stupid interpretations and unreasonable penalties which have been inflicted." This was an obvious reference to the mass prosecution of Boilermakers' Society members at Messrs John I. Thorneycroft, Southampton who struck over the recruitment by the firm of non-union, unskilled riveters (infra, note 84), and reveals Hill's commitment to "responsible" behaviour whether on the part of employers, or of unionists, or even of munitions tribunal chairmen. Class consensus and disciplined role-playing are indeed characteristic of corporatism.

<sup>61</sup> USB, ibid.



"Two professional men seldom find any difficulty in agreeing upon an identical award."<sup>62</sup>

Thus was to be imposed a rational and efficient wage structure on a previously disordered and inefficient bargaining system.

The pursuit of "unity", the second "goal" identified by Pahl and Winkler in their analysis of the "coming corporatism", assumes collaboration, not competition, the latter denigrated as being wasteful and inefficient. By inference, therefore, neither class conflict nor market conflict are compatible with corporatism. Thus the direction and regulation of private industry, in order to meet the needs of government through orders, embargoes, prohibitions, DORA regulations, the fostering of trade associations, common research programmes and price controls represent one side of the corporatist coin. The obverse, however, is the unity of purpose to be established between capital and labour. A "social contract"<sup>63</sup> (or "social compact"<sup>64</sup>) might be established if the sense of moral purpose is sufficiently firm. If the spirit is lacking, this commitment will be underpinned by legal means. Thus following the failure of the Treasury Agreement, the Munitions Act laid the "firm hand of the State" on the country's vital industries, stressing, according to Hill, the lack of partisan quality in provisions seeking to secure "fair profits and fair wages". As another patriotic trade union leader and M.P. Alexander Wilkie, general secretary of the Shipwrights' Association, insisted,

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<sup>62</sup> S. and B. Webb, Industrial Democracy (1898) cited in Tom Keenoy, "Industrial Relations and the Law: From the Webbs to Corporatism", in Z. Bankowski and G. Mungham (eds.) Essays in Law and Society (London: Routledge & Kegan Paul, 1980), at p 188.

<sup>63</sup> The term used by Phelps Brown to describe the Treasury Agreement. See E.H. Phelps Brown, "A Non-Monetarist Explanation of the Pay Explosion", Three Banks Review, No. 105, 1975, at p.10.

<sup>64</sup> The term used by Fitzpatrick to describe the Treasury accords. See David Fitzpatrick, "Strikes in Ireland, 1914-1921", Saothar - Journal of the Irish Labour History Society, Vol. 6, 1980, at p. 28.

"The Act, it should not be forgotten, was an Act<sup>65</sup> of consent of both the employers and the workmen, and as such was designed to operate impartially as between the employers and employees."<sup>66</sup>

The moral purpose of the Act had, moreover, to be clearly conveyed to both capital and labour, a factor which may well go part of the way (albeit a short distance) to explain why the leadership of the latter were so enthusiastically courted by a ministry accustomed to receive a continuous stream of delegations and representations on the drafting and working of the Act. In the case of employers, symbolic gestures and declarations of loyalty from many quarters were no doubt welcome, such as the promise of William Weir, the Glasgow marine engineer, to contribute his company's shell profits to charity.<sup>67</sup> However, the ministry remained sensitive to the possibility that many companies would be reluctant to subordinate their business interests to state intervention, so soon, it must be remembered, after the cry of "business as usual" was common currency. Among its endeavours, therefore, it sought to ensure that the sense of moral purpose would not be placed in jeopardy if the impression were wrongly given that the issue of a control order, scheduling a firm as a controlled establishment, was

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<sup>65</sup>This, of course was incorrect since, as Hinton has pointed out, the rank-and-file were not balloted on the Bill, though they were in respect to the Treasury Agreement. See Hinton, *op. cit.*, pp. 33n.

<sup>66</sup>Shipconstructors' and Shipwrights' Association [SSA], *Quarterly Report*, July-September 1915, p 5. The *Forward*, the Glasgow ILP newspaper, adopted a nice line in sarcasm at Wilkie's expense, whom it described as "a doughty, if somewhat incoherent, champion of the Munitions Act". It continued, "when he lets loose his eloquence upon a paralysed Senate [i.e. Parliament], Sandy is said to have a great advantage over all the other members, in that he is never called to order by the Speaker. The reason why he enjoys this exceptional privilege and is allowed to meander on at his own sweet will is that a bewildered Speaker (like any member who happens to be present) does not understand a single word of what Sandy is saying... But Sandy loved the Munitions Act, pressed it to his breast and made it his own peculiar care. So much was quite clear, even if his reasoning and arguments were as drumlie as a burn in spate." See *Forward*, September 18, 1915.

<sup>67</sup>W.J. Reader, *The Weir Group: A Centenary History* (London: Weidenfeld & Nicolson, 1971), p. 70.



in any way punitive. It therefore announced that firms so scheduled were graciously to be permitted to fly the Union Jack above their works, a practice which was stopped in 1916,<sup>68</sup> presumably on the ground that the flag offered too tempting a target for the Zeppelins.

"Nationalism", which the Union Jack naturally symbolises, denotes of course, the primacy of the state over sectional interests, as well as the promotion of the national performance over that of other countries. In this respect, it might be argued that competitive capitalism adopts a similar criterion. Nonetheless, the activities of individual firms, let alone those of multinational corporations today, might conflict with objectives set by the state as essential to survival. Thus products might compete with one another, thereby depriving the state of production capacity which ought to be applied to specific national objectives such as military equipment. More importantly, the spirit of nationalism might be further fostered by imposing prohibitions on trading with the enemy during wartime. The moral appeal of nationalism, however, seeks to dissolve internal differences. Thus as John Hill encouraged his members in the Boilermakers' Society, the Munitions Act dictated that those industries now controlled by the state were neither "for profit nor wages" but "to make provision for the present war."<sup>69</sup> All other interests were therefore to be subordinated to this object. Indeed, the ideological appeal of nationalism was of greater significance to workers during the war than was the rival claim of socialism, as the fate of the Stuttgart Resolution of the Second International so poignantly reveals. It is scarcely surprising, therefore, that the Glasgow Herald, in commending John Hill's appeal to his members, remarked that,

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<sup>68</sup>MUN 5/353/360/3, op. cit.  
<sup>69</sup>USB., op. cit.

"Coming from the head of one of the most powerful trade unions, the members of which are engaged in producing war materials, Mr. Hill's views are of outstanding interest."<sup>70</sup>

Hill, of course, was merely representative of the vast majority of trade union leaders. Thus the subordination of trade union rights to the national interest, together with the need to establish a consensus, meant that for J.R. Clynes,

"Trade Unionists cannot, of course, expect that all their power and opportunities should be left undisturbed now, or that only employers should feel the effects of any interference by the law. A state of war requires workshop regulations and personal sacrifice and exertions which in times of peace Trade Unions should justly resent."<sup>71</sup>

Alexander Wilkie voiced similar sentiments, when he wrote that,

"The Act, as we stated in the House of Commons, was a drastic one, but we have to remember that we are at war, and many things have to be done in such emergencies as would not be contemplated in peace time."<sup>72</sup>

For such trade union leaders, the commitment to the restoration of trade practices after the war would have been irreconcilable with an analysis pointing to the use of the Munitions Act as an instrument with which employers might launch a capitalist offensive (with or without the active participation of the state) in order to annihilate trade unions. In short, the above labour spokesmen took pains to stress the bilateral nature of the sacrifices involved, thereby underscoring the unity so central to a corporatist strategy. Indeed, some trade union leaders were even prepared to express mild ecstasy at certain of the statutory proposals. John Hill, for example, had no reservations about describing Schedule II to the Act, which contained

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<sup>70</sup>Glasgow Herald, July 15, 1915.

<sup>71</sup>J.R. Clynes, What is the Munitions of War Act? (London and Manchester: National Labour Press, 1915), p. 3.

<sup>72</sup>SSA, op. cit.



the provisions for restoration of trade practices after the war, as a "trade union charter".<sup>73</sup> The Seaman, the organ of the National Seamen's and Firemen's Union, for its part, saw the Act as the means by which "labour difficulties will be overcome",<sup>74</sup> while John Beard, president of the Workers' Union, also wrote a glowing account of the measure.<sup>75</sup> In his case, of course, a spot of "war profiteering" of his own, in the form of potential and dramatic growth of membership in his union, as a result of the proposals for dilution, may have been an added, beguiling factor. Yet whether such optimistic views were genuinely held, whether it was a case of whistling in the dark, or whether such trade union leaders actually believed in the potency of their patriotic appeals to doubting members, they nonetheless expressed the belief that where the lifting of trade practices was,

"... shown to be unquestionably necessary, there will be nothing but cheerful acquiescence."<sup>76</sup>

This attitude reflected, of course, a commitment to the success of the national endeavour, and an acceptance, albeit within limits (perhaps set by industrial conscription under military law) of the canon that the end justifies the means. Thus success, the final linking element within the corporatist syndrome (or indeed within any other political or economic configuration - the distinctive application to corporatism is possibly in terms of the flexibility of the "rules of the game").<sup>77</sup> is pursued both through the directive

<sup>73</sup>USB, op.cit.

<sup>74</sup>Seaman, July 2, 1915.

<sup>75</sup>Richard Hyman, The Workers' Union (Oxford: Clarendon Press, 1971), pp 82-3.

<sup>76</sup>Cotton Factory Times, July 2, 1915. Although the newspaper claimed that, "There is no unkindness to the workmen in this Bill", the cotton unions insisted on exclusion from the scope of the Act. If they abandoned their right to strike, they pleaded, then every local dispute, especially over bad workmanship, would be settled on the employer's terms. Such special pleading, accompanying the call for "cheerful acquiescence" is surely remarkable for its brazenness.

<sup>77</sup>Westergaard observes that Winkler's four goals of corporatism may be found to some extent in any social system, but denies that within modern society they are indicative of a distinctive corporatist order. See John Westergaard, "Class, Inequality and 'Corporatism'," in Alan Hunt (ed.) Class and Class Structure (London: Lawrence & Wishart, 1977), at p. 169. We believe, however, that for the purposes of our study of

activities of the state towards specific targets and priorities and also through the elimination of alternative objectives, such as the protection of trade union restrictions at the expense of the "national interest". Welfare provisions, for example, can be explained in the light of a success-oriented policy. Some have, of course, argued that provision of this nature is ideological in the sense of cushioning a capitalist state against working class antagonism otherwise directed against the upholders of the basic structure of social inequality. And in this respect, John Saville's celebrated description of welfare benefits as "social and political shock absorbers"<sup>78</sup> may attract its adherents. But welfare provision may also perform the function of seeking to improve economic efficiency, both within a predominantly pluralist-capitalist state and also within a corporatist state. Indeed, corporatism, akin to Webbian collectivism in laying stress on ends not means, approves of welfare measures not simply for the purposes of social amelioration. Thus the compensation provisions of the Munitions Act and the prohibition on Sunday labour, for example, were directed to removing grievances and to improving efficiency, in order to maximise munitions output. In other words, they were justified by a crude cost-benefit analysis. But, second, they performed a political function, not simply to deflect the working class from thoughts of unrest, which some believe informs policy in the welfare-capitalist system. They were also designed to integrate capitalists into the national venture by indicating to them the diffused sense of commitment and sacrifice. Thus Michael Barratt Brown has recently written of the "conformative" role of the state which seeks to "contain,

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77(cont'd) wartime labour controls, the analytical usefulness of (at least) the first three corporatist characteristics cited by Winkler, order, unity and nationalism, has been established.

<sup>78</sup> John Saville, "The Welfare State: An Historical Approach", New Reasoner, No. 3, 1957-8, pp 5-25.



incorporate and moderate the conflicts within capitalist society".<sup>79</sup>

For it is apparent that conflicts of interest might also arise between individual capitalists on the one hand, and the state as controller of more extreme abuses of power on the other, a struggle which might even threaten national consensus and stability. For was it not the activities of one firm, Fairfields, which triggered a major explosion of militancy in the Clyde in late 1915?

Thus with a view to prevent such fractious occurrences, state institutions - in this case, the munitions tribunal - both seek to inhibit employers from pursuing what might be thought as provocative courses of action against trade unions and they might even seek to impose direct obligations on firms to compel them to conform to state directives. Thus conformative devices do not simply attempt to offer palliatives to the working class to ensure the latter's integration within a given structure of ownership and control. They seek to focus attention on employers and on their conduct and attitudes.

Thus take, for example, the case of the Glasgow apprentice pattern-maker who complained in 1916 that he had been suspended by his employer.<sup>80</sup> The firm stated that he had refused to work overtime on urgent government work, and that it was their practice to suspend apprentices for the sake of discipline. Yet as Sheriff Fyfe insisted,

"... all such practices had gone by the board for the war period. Firms could not work under the Munitions Act unless they adhered to it."<sup>81</sup>

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<sup>79</sup> Michael Barratt Brown, "The Welfare State in Britain", in R. Miliband and J. Saville (eds.) The Socialist Register 1971 (London: Merlin Press, 1971). For a suggested application of this concept, see Jeanne Gregory, "Sex Discrimination, Work and the Law", in Bob Fine et al. (eds.) Capitalism and the Rule of Law (London: Hutchinson, 1979) Ch. 9.

<sup>80</sup> Glasgow Herald, October 4, 1916.

<sup>81</sup> Ibid. The tribunal awarded the apprentice one day's pay in consequence of the illegal suspension.

Thus a firm might prosecute, but could not suspend when employees went absent without leave. In this respect, therefore, the Munitions Act actually removed certain disciplinary powers from employers.

Perhaps another wartime illustration concerns the asserted rights of workers to join trade unions despite the opposition of their employers. It is certainly true that state institutions remained unmoved by the claim of trade unionists to refuse to work alongside non-unionists, as Lloyd George made clear to the ASE at his meeting with them on December 31, 1915 to discuss amendments to the 1915 Act.<sup>82</sup> Thus employers who upheld the wishes of non-unionists or who refused to consult the trade unions before introducing non-union labour were not prevented by the state from doing so. Indeed section 15 of the 1916 Amendment Act plainly approved the introduction of non-union labour into a controlled establishment where prior to the war a closed shop had existed. For the section expressly provided for the restoration of this particular pre-war practice at the end of hostilities. Nonetheless, it is significant that the necessity for giving notice to the workmen and for providing, where possible, the opportunity for local consultation (conditions applicable, on paper at least, to every other type of workshop change) were omitted from this highly contentious alteration. Paradoxically, of course, though the intention was to advance the output of munitions by allowing the employer to bring in whoever could perform the tasks, irrespective of trade union membership, such a stance occasionally had the opposite effect. For it was just the sort of issue which could lead to prolonged and bitter conflict involving trade unions. Thus in Glasgow, 22 sheet-iron workers at Messrs John Broadfoot & Sons Ltd., Whiteinch, were fined £1 each for having imposed an overtime ban in response to the company's

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<sup>82</sup>Beveridge Collection of Munitions (at London School of Economics; henceforth Bev.) III, 9, ff. 43-61.



"deliberate attempt to introduce non-union labour into the Clyde yards".<sup>83</sup> The best illustration is, however, the major dispute involving the boilermakers at Thornycroft's shipyard at Southampton in September 1915, which eventually resulted in the prosecution of 50 of the 1700 strikers.<sup>84</sup>

Unwilling to go as far as enforcing a closed shop,<sup>85</sup> for this was

<sup>83</sup>Glasgow Herald, November 11, 1915. Interestingly, the tribunal chairman, Cmdr. Gibson, remarked that if the union had referred the matter to the Board of Trade for arbitration, instead of imposing their overtime ban, they would probably have received a favourable decision. Here, already, is an early indication that tribunal chairmen might not consistently follow the ministry line in their obiter utterances.

<sup>84</sup>For this well documented strike, see Lord Askwith, Industrial Problems and Disputes (London: John Murray, 1920) pp 396-8; John Mahon, Harry Pollitt: A Biography (London: Lawrence & Wishart, 1976) pp 49-51; Woman's Dreadnought, October 9, 1915; Glasgow Herald, October 4, 1915; USB, Monthly Report, October 1915, p 11; Labour Gazette, November 1915, p. 422.

<sup>85</sup>In 1917, the Welsh Commissioners on Industrial Unrest did, however, recommend compulsory unionism as conducive to greater industrial stability. See Glasgow Herald, August 2, 1917. The Scottish Commissioners pointed to the problem of arrears of union membership which had arisen as a result of the prohibition on industrial action contained in the Munitions Act. Unions were therefore more hesitant to take retaliatory action against a member who deliberately allowed his subscription to lapse or against an employer who tolerated such "rebellious" conduct among his employees. The institution of the closed shop would prevent such union dissatisfaction from arising, a point of which the Ministry of Munitions was itself cognizant. It suggested that unions should indicate to their members that where membership of the union terminated, as a result of subscriptions being overdue, such ex-members would, under section 15, be liable to discharge from employment on the termination of the war, where a pre-war closed shop had existed. For the ministry's correspondence, see USB, Monthly Report, December 1916, pp 35-6; Associated Blacksmiths' and Ironworkers' Society [ABIS] 4th Quarterly Report, October-December 1916, pp 2159-60. For the Scottish Commissioners' observations see ibid, 2nd Quarterly Report, April-June, 1917, p 2343. For other aspects of the arrears question, see ibid, 1st Quarterly Report, January-March 1918, p 2573; SSA, Quarterly Report, July-September 1915, p 7; ibid, January-March 1916, p. 20; ibid, April-June 1916 p 34; USB, Monthly Report, March 1917, p. 35. We may also note at this point the "double-edged" quality of section 15, primarily a measure to permit of the dismantling of the closed shop for the duration of the war, it could yet be employed by unions in order to threaten members to toe the line as far as subscriptions (and possibly also other questions) were concerned. This contradictory feature is merely one of the many paradoxical dimensions, as we shall see, to the enforcement of a code of restrictive legislation principally designed to regulate labour.



to be left to negotiations between employers and trade unions,<sup>86</sup> the ministry nonetheless determined to support the right of workers, as against their employer, to be trade union members. Thus, on the extremely rare occasions when workers complained to the munitions tribunal that their membership rights had been denied by employers, the ministry were prepared to back up the complaints or even to institute proceedings against the employer themselves. For example, the ministry supported the appeal of an iron moulder, Alfred Guillet, sacked by his employer, E.H. Bentall & Co. Ltd., engineers, for having joined a union, even though the employer, a controlled establishment in Essex, had compelled his workforce to sign a statement renouncing trade union membership. Thus exploiting the statutory prohibition on restrictive practices to his own advantage, Guillet obtained a ruling from the English Munitions Appeal Tribunal, supported by counsel for the ministry, who also spoke at the hearing, that the employer's anti-union policy was an unacceptable restraint, and therefore unlawful under the Munitions Act.<sup>87</sup> Similarly, the ministry decided to prosecute the manager of a controlled establishment in Loughborough, alleged to have locked out his staff contrary to Part I of the Act and to have prevented them from joining the Workers' Union, which was a breach of section 4(3), relating to the lifting of restrictive practices.<sup>88</sup>

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<sup>86</sup>For one example, see ABIS, 1st Quarterly Report, January-March 1918, p 2575.

<sup>87</sup>For discussion of the case, see Guillet v E.H. Bentall & Co. Ltd. reported in the Munitions Appeal Reports, Vol. 1, 1916, pp 86-98, May 19, 1916; Scottish Law Review, Vol. 32, July 1916, p 152; Fyfe, op.cit., pp 335-6; USB, Monthly Report, June 1916, p 53; SSA, Quarterly Reports, April-June 1916, p 40; Associated Iron-Moulders of Scotland [AIMS], Monthly Report, May 1916; Trade Union Worker, March 1916, p 8; ibid, April 1916, p 8. A postscript to the case was the offence taken by the Workers' Union to the claim of the Brassworkers' Union to have fought the case on behalf of Guillet. The Brassworkers' action was condemned for its "barefaced impertinence". See ibid, July 1916, p.8. That the Workers' Union was the stronger body is probably to be inferred from its ability in the winter of 1917-18 to force Bentalls to arbitration over a wage claim. See LAB2/118/IC 707, January 25, 1918. For the history of the Munitions Appeal Reports covering England and Ireland and of the Scottish Munitions Appeal Reports, see Rubin (1977b) op.cit. These specialist law reports will henceforth be cited as (1916) 1 MAR 1-10; 1916 SMAR 1-10 etc., with the dates of judgment, if appropriate.

<sup>88</sup>See over.



From a broader perspective, the ministry support for the trade unionists in these cases was a clear signal to employers that the state was prepared to discredit manifestations of discrimination which posed even a minor threat to the delicate consensus which it sought to foster. Thus pragmatic considerations undoubtedly lay behind its support for the principle, even where it intruded directly on the competing principle of managerial property rights. Indeed, a provision was inserted in the Munitions Act of August 1917 which declared it an offence for an employer to discharge a munitions worker on the ground that he was a trade unionist, or that he had taken part in a trade dispute.<sup>89</sup> Thus, though the initiative seems to have sprung from the trade unions during the period of hard bargaining over the ultimately abortive dilution proposals under the 1917 Bill, the government clearly was not unhappy about legislating against the interests of employers, in the belief that the national interest demanded the promulgation of "conformativist" measures.

Such a concept of conformativism does in effect represent an important stride towards corporatism, and offers further support to the thesis that wartime government policy must be understood in terms of temporary, if perhaps milder, restraints on employers as well as upon

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<sup>88</sup> LAB2/57/CE 102/6, "Yorkshire and East Midlands General Munitions Tribunal, Constitution File". The hearing was conducted in the Nottingham Guildhall on September 7, 1917.

<sup>89</sup> Thus under section 9 of the 1917 Act, a fine of not more than £10 might be imposed on an employer, and the whole or part of the fine could be paid to the worker as compensation. It is tempting, but perhaps not wholly convincing, to believe that the government's influence on employers was such that very few tribunal complaints under this provision were received. For the only Glasgow case discovered, see Glasgow Herald, April 26, 1918, where Sheriff Fyfe found no evidence to support the charge. He remarked that the provision was "very impracticable ... as any enactment must always be which tried to create an offence based upon motives, not upon actions." For later examples where claims of alleged victimisation within Glasgow factories, particularly against women, were considered by the tribunal, see especially Chapter ten (infra).

munitions workers. In this scheme, direction and production are not designed with the private capitalist's single-minded aim of profit maximisation,<sup>90</sup> but with the objective of military success. Indeed the matter of profits is, for the duration, incidental, except where disclosures of windfall gains threaten to undermine the spirit of unity.

The essence of corporatism is, therefore, private ownership but state-bureaucratic control. Thus as well as being distinguished from capitalist private ownership and private control, corporatism also contrasts with state socialism, entailing both ownership and control through executives of the state. Corporatism may also be said to depart conceptually from what is commonly described as the mixed economy, part nationalized and regulated, part private and unregulated, within which milieu wartime revolutionaries saw the rudiments of the servile state. For corporatism attempts total, or virtually total, control over the whole sphere of national economic life, including the sphere of private capitalist activity itself, that is, over the very sector which critics such as Belloc saw as basking in its own state-financed and state-assisted "freedom".

It remains true, of course, that the Munitions Act still permitted pluralist activity, while the organisation of the war economy yet fell considerably short of, for example, the comprehensive scheme of national conscription (or indeed of fascism) submitted by H.M. Hyndman to the War Emergency Workers' National Committee (WEWNC) in 1917.<sup>91</sup>

Nonetheless, it must be concluded that in respect to those

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<sup>90</sup>This is, admittedly, a simplified caricature, given the body of modern literature which suggests the existence of alternative policies to the pursuit of profit maximisation among businessmen. But it does serve well for the purpose of elaborating our theory. For recent work on business objectives, see, for example, the selection of essays reprinted in Michael Gilbert (ed.) The Modern Business Enterprise (Harmondsworth: Penguin, 1972).

<sup>91</sup>Winter, op. cit., p. 213.



spheres of activity relevant to our study, that which gave the British war economy its (albeit limited) corporatist character was that its state bureaucrats regulated industry in a directive capacity rather than in a supportive or facilitatory one in its dealings with capital and labour.

### Corporatist Law

As a study of the empirical effects of a legal measure, this work retains a particular interest in the role of law in a corporatist society. Thus as a consequence of,

"Unifying the state and society, "Newman points out,<sup>92</sup> "corporatism logically awards the individual lower priority than to the group [*sic*]. The legal order no longer stands distanced from the hurly-burly of daily life ... Little wonder that law becomes malleable and transient ... that the boundary line between the legal order and administration becomes indistinct."

Moreover, since law is employed in pursuit of a corporatist strategy, it cannot be neutral between conflicting interests. Thus, as Winkler observes,<sup>93</sup> the

"... State no longer stands above society ensuring impartial implementation of rules. The role of State organs is to discover the cause of disputes and restore cooperation ... The law becomes a positive instrument for social integration and this has correlative effects on the traditional roles of lawyers and judges. No longer independent professionals, no longer independent in any sense, all become public administrators."

The law is therefore an instrument to pursue collective ends. Indeed, it will be used sparingly. Due process, delay, the embodiment of constraint, may all inhibit goal achievement (i.e. "success").<sup>94</sup> The rule of law is, in fact, a fetter with which corporatists, in theory,

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<sup>92</sup> Otto Newman, The Challenge of Corporatism (London: Macmillan, 1981), pp 162-

<sup>93</sup> J.T. Winkler, "Law, State and Economy: The Industry Act 1975 in Context", British Journal of Law and Society, Vol. 2, 1975, pp 103-128, at p. 117.

<sup>94</sup> Ibid, pp 117+8.

might dispense. Did not Addison tell the House of Commons, after the banishment of the Clyde shop stewards, that,<sup>95</sup>

"The method of deporting these men was resorted to in the first instance because a criminal trial would require an interval of six weeks or two months before it could be held, and it was felt that immediate action was necessary"?

Moreover, did not a large number of DORA regulations, including Regulation 8B, the precursor of the leaving certificate scheme,<sup>96</sup> fall foul of the ultra vires doctrine,<sup>97</sup> prompting a leading civil servant to remark complacently after the war,<sup>98</sup>

"But the fact is, that in the great majority of cases, what was lawful and what was not lawful did not so much matter ... many devices which were legally unsound or doubtful, were enforced without difficulty and accepted without demur, provided that they had behind them the weight of popular opinion and the patriotic support of the most influential men in the trade."?

Corporatism certainly tilted to antinomianism in its instrumentalism, while the rule of law, as civil servants such as E.M.H. Lloyd well recognised, was under severe pressure as a factor inhibiting smooth corporatist administration.

For helping to squeeze out, though not to eliminate, the "due process" of liberal-democratic law (and indeed to "pre-empt major sections of the law's former function")<sup>99</sup> was a battery of executive devices designed to quicken the pace of corporatist policy planning and implementation.

Describing corporatist trends in the 1970s, one writer<sup>100</sup> points to such executive devices as,

<sup>95</sup>Quoted in C.J. Wrigley, David Lloyd George and the British Labour Movement (Hassocks: Harvester Press, 1976), p. 162.

<sup>96</sup>OHMM, Vol. I, Part IV, p. 39.

<sup>97</sup>T. Baty and J.H. Morgan, War: Its Conduct and Legal Results (London: John Murray: 1915), esp. at pp 102-4. There was also considerable post-war litigation on the legality of DORA regulations.

<sup>98</sup>E.M.H. Lloyd, Experiments in State Control (Oxford: Clarendon Press, 1924) p. 64.

<sup>99</sup>Newman, op.cit., p. 163.

<sup>100</sup>Ibid, pp 163-4; citing Winkler, op. cit., p. 119.



"... the vastly expanded power vested in central government ("the State") in awarding - or withholding - contracts, subsidies, loans or communications; quasi-institutions (the "quangos") - vaguely defined, amorphous and yet hyperactive - abound; non- or quasi-statutory bodies ... proliferate, possessed of decisive power of veto in regard to livelihood and career; enabling legislation, couched in vague but all-purpose abstraction, yet often omnipotent (as well as deviously installed) becomes commonplace; and one no less witnesses a host of extra-legal pressures - such as media cultivation, and 'unintended leakages' - diffused among those in authority..."

It hardly requires enormous reserves of imagination to apply this description, with or without modification, to the wartime administration of munitions production; with the state's expansive government contracts department; its quangos, such as the Clyde Dilution Commissioners and armament output committees; its non-statutory bodies such as the enlistment complaints committees with an indirect power over life or death; its quasi-statutory bodies such as military tribunals and the munitions tribunals themselves; the all-conquering and "deviously installed" DORA; the media cultivation, for example, the Forward incident; and the "unintended leakages" (was, for example, Colonel Repington making his disclosures of shell shortages without the connivance and assistance of civil servants?) Thus was the liberal democratic tradition of the rule of law subject to a thousand cuts.<sup>101</sup>

Yet though corporatist principles had not penetrated so deeply during the war economy as to dispense with due process at all times, and in all places, nonetheless, the virtual repeal of habeas corpus, permitting the government to detain persons without trial on the ground

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<sup>101</sup>For the variety of wartime administrative bodies, see J.A. Fairlie, British War Administration (New York: Oxford University Press, 1919).

of their hostile origins or associations,<sup>102</sup> and the deportation of the shop stewards, also without the safeguard of a trial, reveals how easily the influence of corporatist strategy might lead on to more totalitarian solutions.<sup>103</sup> Indeed, part of the fascination of the history of the Glasgow munitions tribunal concerns the crisis of identity which afflicted certain tribunal chairmen contemplating the prospect of adjudicating solely in accordance with the policy wishes of the ministry. The tension between the, on occasion, rival claims of judicial autonomy and the advancement of the (ministry's) national interest is a revealing instance of contradiction between corporatism and those courts which still clung to the unrealistic assumption of judicial neutrality.

It is, moreover, arguable that within the corporatist framework, law ought, in fact, to be unnecessary where the values of order, unity, nationalism and success are internalised. Thus in theory at least, the corporatist state's citizenry would be expected to respond spontaneously to state directives, and ensure, through self-regulation, compliance with such ordinances. Indeed a major role for trade unions in the corporate state is their willing policing of those terms agreed upon by

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<sup>102</sup>The classic House of Lords case is R v Halliday, ex parte Zadig (1917) A.C. 260. Lord Shaw of Dunfermlinewas a lone voice in the judicial chamber protesting against the inference from a regulation that a man could be held without trial or without being accused of an offence. Shaw probably had in mind the Zadig case when he wrote to Herbert Samuel in January 1918 that, "the DORA ... did not warrant, and Parliament, unless it had been tricked, could not have sanctioned, the implication that compliant Governments have put upon it." Cited in Chris Wrigley, "Trade Unions and Politics in the First World War", in Ben Pimlott and Chris Cook (eds.) Trade Unions in British Politics (London: Longman, 1982), at p. 83.

<sup>103</sup>A number of trade unionists did, nonetheless, stand trial for having infringed Reg. 42B relating to the restriction of output. The most notable cases are probably those involving Tom Rees, London district secretary of the ASE and George Morris, Coventry secretary of the Workers' Union. For Rees, who was acquitted, see Hinton, op.cit., pp 184-5; Trade Unionist, March 1916; ibid, April 1916; Glasgow Herald, February 21, 1916. For Morris, who was convicted and sentenced to three months' hard labour, see Hinton, op.cit., p. 220; Glasgow Herald, November 14, 1916. His sentence was subsequently set aside. For other similar DORA prosecutions against workmen, see, for example, Glasgow Herald, April 18, 1917 (allegation against Birmingham shell workers of restriction of output) and ibid, August 9, 1917 (Glasgow dockers leaving off work and assaulting sub-foremen).



the "rational" process superimposed by corporatist centralization on an otherwise chaotic wages market.

"Let me say quite frankly", declared Alexander Wilkie, in the wake of the Fairfield shipwrights' case, "that no organisation worthy of its name could exist unless there is to be some discipline within its ranks and the rules of the association, to which every one individually and collectively subscribe, are carried out..." <sup>104</sup>

Trade unions now become, in this scenario, the agents of the corporatist national interest, not the protectors of sectional, working class interests. The corporatist state cannot accommodate decentralized autonomy or policy making by shop steward committees, nor alternative foci of loyalty. Unions, indeed, have a duty, together with employers, to maintain disciplinary standards at work; for example, in respect to timekeeping. Did not Cammell Laird of Birkenhead take large numbers of their shipyard workers to the munitions tribunal because "the unions had been unable to curb the losses," <sup>105</sup> through bad timekeeping?

The threat to the corporatist edifice comes, of course, from those individuals or groups who succumb to "irrational" or to "malevolent" urges which undermine the corporatist entity. Trade unionists or employers might thereby generate inefficient, gratuitous or unnecessary conflict in industry. Where the moral force of law in the corporatist state fails in its mission to secure positive social integration, then it may be driven to fall back upon the threat of negative sanctions. In a sense, the Treasury Agreement was the "dry run", as a test of the efficacy of moral appeal. That having allegedly failed, the elaborate,

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<sup>104</sup> SSA, op. cit., According to the Govan Press, October 15, 1915, it was Wilkie himself who paid the fines of the 17 Fairfield strikers. On the other hand, as he allegedly insisted that they be repaid to him in instalments, he presumably thereby sought to maintain discipline within the ranks.

<sup>105</sup> Glasgow Herald, September 20, 1915. Italics added. See also chapter two (infra).

sanctions-based code of legal regulation was framed in its place with a view to impose the necessary consensus. Yet both legislators and tribunal chairmen were conscious of the difficulty of changing workers' attitudes and behaviour, not only where reliance was placed on punishment-oriented sanctions, but also where the interests of the state were perceived to be at odds with the interests of those subject to state controls. Thus the pursuit by the government of something in the nature of a domestic tribunal, as distinct from the police court, as the model for the munitions tribunals,<sup>106</sup> is symptomatic of the concern to de-emphasise punishments. But additionally, the legal officials required to draw upon large reserves of flexibility in handling the cases which came before the tribunals, in an attempt to transcend the second difficulty expressed above, where munitions workers might perceive their interests differently, according to whether they were fulfilling their roles as producers or as citizens. For as a revealing memorandum from the Board of Trade Insurance Department, which Middlemas cites, observed on the very day before the Munitions Act became law,<sup>107</sup>

"(1) That it is impossible to secure the performance of any new duty by the individual member of the population unless the particular act of fulfilment is closely linked up with the personal self-interest of the individual, or with the action which he would normally take in his own self-interest;

(2) That legal sanctions as to penalties are powerless to secure the general performance by members of the population of any such duties if divorced from self-interested motives or actions; it is impossible to prosecute the whole population;

(3) That the use of legal sanctions to enforce the performance of any duty only becomes effective if the persons upon whom the duty is placed are limited in number and responsible in character, the more limited the number and responsible their character, the more effective being the sanction."

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<sup>106</sup> See the speech of the Home Secretary, Sir John Simon, in H.C. Deb., 5th Series, Vol. 72, col. 1548, June 28, 1915.

<sup>107</sup> Middlemas, op. cit., p. 84.



In fact, however, it might just as easily be argued that the more limited the number and the more responsible the character of those in question, the more irrelevant is the sanction, especially within the corporatist milieu where narrower sectional or individual conflicts are subsumed by, or even eliminated from, the pursuit of the broader "national interest".

However, the continued existence of "irrational" pluralist activity, including strikes or other manifestations of industrial misconduct, can scarcely be discounted by the authorities. They, themselves, may appreciate that their innovative schemes of national management are susceptible to the contradiction of a system which expects the leadership of defensive mass-membership bodies to engage in the regimentation of collectivities which, impelled by other forces, are likely to be resistant in the final analysis to tight internal discipline. System contradiction thus ensures that the total elimination of conflict, whether manifested through the "revolt from below", through bad timekeeping, or through the hundred and one other forms of industrial non-conformity, is a pipe-dream in a society not ruled from the point of a gun.

Thus while the ministry were prepared initially to contemplate harsh and repressive punishments (which in the broader context were puny compared to what theoretically might have been prescribed in wartime), the principal object of sanctions in a corporatist state is nonetheless not to punish offenders for statutory infractions but to impress upon them the primacy of those elements of the corporatist syndrome; indeed, to convert, if possible, rebellious elements and the wider society to the value of the "corporate spirit". Punishment might therefore take the form of moral condemnation or of an "educative" lecture, rather than of a penal sentence. For example, where offenders appear to acknowledge the supremacy of corporatist objectives and that their conduct interfered with the attainment of the latter, the

need to deter repetitions might be weighed against whether any purpose would be served by the imposition of coercive punishments on the immediate parties. Indeed, not only the sentences imposed by tribunals during the war, but also the adjudications on, for example, the granting of leaving certificates, tended to correspond to corporatist criteria as outlined above. Encapsulated in the short-hand term, the "national interest" the guideline was explained by Sheriff Fyfe, in the case of leaving certificate applications.

"The leading consideration", he indicated,<sup>108</sup> "always was whether it was more in the national interest that a workman should remain in his present employment, and, until that was decided, it was the workman's duty to remain at his work ... The duty of the tribunals was the difficult, and often delicate, one of deciding how the national interest would be best served ..."

The corporatist spirit, which laid stress on the four goals of unity, order, nationalism and success, was perhaps more fully articulated by Fyfe in the following passage, where he explained,<sup>109</sup>

"The purpose of the Munitions Code is to protect all interests, and to remove causes of friction whether between employers and workmen, or between classes of workers. It is perhaps hardly to be expected that either employers or workers should regard very cordially legislation which calls upon employers to forego the enhanced profits which the exceptional economic situation might confer upon them, and which suspends for the time being certain long-cherished privileges by which workmen set great store. But, however difficult it may be for the industrial world to grasp legislation which temporarily upsets long-accepted notions of freedom of contract, some form of sacrifice is the lot of all classes in the present exceptional times, and the temporary abandonment of cherished ideals is the form of sacrifice which, in the national interest, the Munitions Act requires of the industrial community. If the Act curtails individual liberty of action as it does, it at any rate treats employers and workmen alike in that respect..."

All the corporatist ingredients, that is, the sense of unity reflected in the elimination of class conflict and in the bilateral sacrifices

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<sup>108</sup>Fyfe, op. cit., pp 22-3.  
<sup>109</sup>Ibid, p. 72.



demanded by the state; the sense of order brought about by the removal of "causes of friction"; the pursuit of the national interest ("nationalism"); and the drive to success ("to protect all interests ... in the present exceptional times") are embodied in Fyfe's discourse. As stated earlier, these corporatist elements offer an analytical perspective through which to examine tribunal adjudications. Though not tight enough to enable one to predict the outcome of cases, they nonetheless permit one to explain the tendency of the case law, and, indeed, to explain the dissatisfaction of ministry officials with the adjudicatory performance of certain tribunal chairmen. For just as it is probably technically impossible for a statute to regulate, except at the broadest level, issues involving matters peculiar to individual workshops, plants and companies,<sup>110</sup> by a similar token, the activities of legal adjudication cannot be straitjacketed, particularly where, as in the case of the munitions tribunals, a rigorous system of precedent was initially lacking. The tension between central direction and local, judicial administration is a matter which we will explore in more detail shortly. Nonetheless, that corporatist sentiments informed tribunal decisions is beyond dispute.

Tribunal chairmen, indeed, frequently commended the patriotism ("nationalism") of those defendants appearing before them, and correspondingly dispensed with, or significantly modified, the negative sanctions which they might otherwise have imposed in such cases. For example, in the midst of the strikes over the deportation of David Kirkwood, 23 shipwrights were charged by the Ministry of Munitions with having refused to obey the lawful orders of their foreman by declining to return to work at 10 o'clock one night in March 1916 in order to dock and undock vessels at Elderslie Graving Dock.<sup>111</sup> Their action,

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<sup>110</sup> Cf., P.L. Davies and M.R. Freedland, Labour Law: Text and Materials (London: Weidenfeld & Nicolson, 1979) p. 20.

<sup>111</sup> Glasgow Herald, March 29, 1916.

which was wholly unconnected with the turmoil experienced at the time in the Clyde district, was taken, they explained, because they would have been refused payment for the whole night had they returned just to turn around the ships in question. However, as a result of the men's non-appearance, the vessels, which were not government ships, missed the tide. Yet, though the tribunal chairman, Cmdr. Gibson, found the men guilty of a "technical offence", nonetheless,

"He congratulated the respondents all the same on the patriotic attitude they had taken up in undertaking to do Government work night or day in all sorts of weather, and he believed that a little tact on the part of the management would have solved the whole situation."<sup>112</sup>

He consequently imposed a modified fine of 5/- on each accused. Indeed the patriotic posture by munitions and shipyard workers, inasmuch as it was not contrived for the particular audience of the munitions tribunal members, even informed the nature of some of the outbursts and protests heard at tribunal hearings on a number of occasions throughout the war. Thus during the Fairfield coppersmiths' prosecution in Glasgow in August 1915, for example, the tribunal chairman, Professor Gloag, reproved the actions of those accused who were standing up and interrupting the proceedings. "Remember this country is at war. Does that never occur to you?" he demanded,<sup>113</sup> whereupon another of the accused, Owen Rodgers, stood up and replied,

"I am as much a patriot as any man in this room. We have been looked upon as unpatriotic in this matter. I have seven relations both in the trenches and on the sea. No man dare tell me that I am sacrificing their lives by remaining out."<sup>114</sup>

Similarly, at Liverpool, where, as briefly mentioned earlier, a large number of shipyard workers employed by Cammell Laird at Birkenhead had been fined, the Glasgow Herald vividly described the ensuing event.

There was, it declared,<sup>115</sup>

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<sup>112</sup>Ibid.

<sup>113</sup>Ibid., August 3, 1915; OHMM, Vol. IV, Part II, p.50. See also chapter four for full discussion of the case.

<sup>114</sup>Ibid.

<sup>115</sup>Glasgow Herald, September 20, 1915.



"... a scene of indescribable uproar at the close. Men leapt to their feet, shouting denunciation of the firm, and of some of their officials, one man declaring that the court was causing a revolution in the country by its finding, another shouting, 'It is time the Germans were here if this is how British working men are to be treated. We are here, not as slaves, but as workmen, and we can do our work'."

Clearly patriotism was a quality expected of workers appearing before the tribunal, and the chairmen would duly acknowledge evidence of such sentiments by modifying sentences. But the tribunal chairman did not always appreciate the double-edged quality of the beast and that, as perceived by workers, patriotism cut both ways.

They were, however, conscious that the impression of unity and consensus, which it was corporatist policy to promote, necessitated, from time to time, certain expressions of condemnation of managerial practices which threatened the shaky edifice. Thus not only might chairmen such as Cmdr. Gibson mildly reprove those employers whose tactlessness, as in the Elderslie Graving Dock case, contributed to the dispute. But fierce condemnation might be uttered against employers such as on the occasion when Gibson pilloried Fairfield shipyard for its "reprehensible conduct" in refusing, for three weeks, to grant a leaving certificate to a worker whose services they no longer required.<sup>116</sup> What is significant is the desire on the part of the tribunal chairman to publicize criticisms of employers.

"He thought it right to make that public intimation now, that that court in particular looked askance on such conduct on the part of employers."<sup>117</sup>

At Bradford munitions tribunal, the chairman strongly attacked the conduct of a foreman who had instituted a prosecution for bad time-keeping against an employee. The accused argued that the charge had been brought vindictively by the foreman because the former had complained

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<sup>116</sup>Ibid, October 5, 1915. See also chapter two (infra).  
<sup>117</sup>AIMS, Monthly Report, January 1916, p. 250.

at the latter's bad language. Indeed, when a sample of the language employed was repeated to the tribunal chairman, he indignantly declared,<sup>118</sup>

"I don't think working men ought to be subject to such language, and I ask the firm if they should not consider whether you are a suitable man for the position. You are the foreman, and ought to set a good example and instead, you have set a filthy example."

Yet what clearly perturbed the tribunal chairman was not bad manners or the gratuitous expression of obscenities, but the threat to "order" and "unity" in the establishment, which the foreman's actions were posing. Bilateral restraints were, officially, to be features of wartime policy, at least at the level of public pronouncements. Yet that they tended to operate unequally was strongly symptomatic of the structural flaw in the Munitions Act. For it is suggested that the Munitions Act, in conception, approximated more closely to what Donald Black has called a social-welfare model of law, born of a "proactive" legal system, than to an entrepreneurial model, which is the product of a "reactive" legal system.<sup>119</sup> The former assumes that the legal good of citizens is defined by government with the help of interest groups, and therefore imposes, rather than merely makes available, the law. The latter entrepreneurial model, on the other hand, assumes that each citizen voluntarily and rationally pursues his own interests on a utilitarian basis, with the greatest good deriving from selfish, atomised enterprise. As Black observes, it is the legal analogue of the market economy. Yet by enabling individual employers such as Cammell Laird to institute proceedings, and by enabling firms to withhold leaving certificates, the Munitions Act, an avowedly proactive corporatist measure, was in fact relentlessly permitting, and being seen to permit, the pursuit of an individualist entrepreneurial initiative.

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<sup>118</sup> Ibid., December 1915, p. 243.

<sup>119</sup> Donald Black, The Behavior of Law (New York: Academic Press, 1976)



Against this challenge, the tribunals, even if willing, could do little to appease the aggrieved.

Certainly, the tribunals always imagined themselves as reliable allies of a policy which, on paper, eschewed class partizanship. Thus, while the chairmen of munitions tribunals (with particular reference to the Glasgow tribunal) frequently invoked the national interest as the criterion by which their decisions might be adjudged; while they often commended the patriotism ("nationalism") of those defendants appearing before them; while they chided, in the name of unity, those employers and foremen who coercively and insensitively wielded the Munitions Act against aggrieved workmen, and while in general they sought to discourage "disorder" in the labour market by refusing to grant leaving certificates to those who simply wanted to better themselves; yet, in the final analysis they - or some of them - were too unreliable for the bureaucratic elite who inhabited the offices of the Ministry of Munitions. For, leaving aside the history of disorder which accompanied so many of the major hearings at the Glasgow Tribunal, the tribunal chairmen were the repositories of discretion in decision-making, a licence which, in the event, created too much uncertainty for the peace of mind of a ministry dedicated to centralized direction of labour policy. That discretion, and not merely flexibility in imposing sentences (which has already been mentioned), could be exercised wisely or foolishly, from the perspective of the ministry authorities. In the case of certain of the Glasgow chairmen, that discretion was, in the ministry's view, undoubtedly exercised foolishly by legal officials, fatally beguiled into over-asserting their judicial independence. As we shall see, it was one thing for corporatists to permit a delegated dose of equity in adjudicating upon, say, the hard case of an individual seeking a leaving certificate on medical grounds, where the loss was confined to the employer in

question.<sup>120</sup> However, where the tribunal chairmen allowed their discretion to lead them beyond the narrow decision-making contours mapped out for them by the ministry, so that, in one episode, they appeared to be formulating wages policy by their decision-making, they trenched on the corporatists' territory. This was viewed by the civil servants as unforgiveable, as they feared it would threaten the collapse of a delicate industrial status quo arranged through centralized direction. It was illegitimate for petty legal administrators remote from a central planning department pursuing corporatist tendencies, to exceed their allotted, minimal roles by raising false hopes of financial amelioration among rank-and-file workers. Judicial autonomy was therefore inconsistent with corporatist autocracy. Thus, where it seemed to the ministry that the chairmen's weaknesses, incompetence or indiscipline were subverting this autocracy, they were dealt with as swiftly and as decisively as the perceived enemies of the state, the militant shop stewards.

As we have already observed, corporatists conceive of law as an inhibiting factor. Judicial administrators in the corporatist state would, indeed, be prepared to acknowledge the threat to corporatist policy posed by the legal process, were its restraining effects not themselves curbed. We have, for example, noted the opinion of the leading civil servant, E.M.H. Lloyd, on the disregard for the rule of law which the ultra vires status of DORA regulations implied. Even within the upper reaches of the judiciary, normally hide-bound by precedent and by due process, Lord Sands clearly approved of the fact that,<sup>121</sup>

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<sup>120</sup>Theorists of corporatism have argued that the moral criterion of equity may be applied to adjust the distribution of income in accordance with the notion of the "just wage", though structural inequality will nonetheless remain. Thus while legal decisions on the Munitions Act ought to have been arrived at by the technical criterion of rationality, that is, by whatever decision furthered the national interest, hard cases were bound to arise, demanding an equitable solution. For the moral criterion of equity within corporatist theory,

see Crouch (1977) op.cit.  
<sup>121</sup>McNeill & Co. Ltd. v Mackay et al. 1919 SMAR, 195-9, January 23, 1920, at p. 196.



"... the public spirit and patriotic sentiment which animated the nation have led Tribunals without hesitation to adopt canons of construction which I think would have been rejected had the same question arisen in time of peace."

The legitimation of a policy-based decision, entailing a significant departure from orthodox judicial standards, is therefore clearly articulated in this passage. In the light of such a loyal espousal of the executive's will, therefore, it was simply asking for trouble for one Glasgow tribunal chairman, Cmdr. Gibson, to respond as he did to an observation by the Ministry of Munitions' labour officer attending his court. In this incident, a number of men had been prosecuted for refusing to work overtime, as a protest against the employment of a non-unionist. The prosecuting labour officer, Cramond, had intimated to Gibson that the ministry,<sup>122</sup>

"... were rather anxious that it should be tried before the other court [i.e. the general munitions tribunal], as it was really a partial strike."

This drew an astonishing, indeed suicidal, attack by Gibson on the ministry for daring to encroach on the independence of the judiciary.

"It does not matter one jot or tittle to me", he declaimed indignantly,<sup>123</sup> "what are the views held by the Ministry of Munitions in London. I am here as chairman of this Court to weigh up the facts submitted to us, and I will not be influenced one way or another. I am here to act as judge and I will do so."

It was a brave, but foolish and naive, outburst, inspired by the best traditions of judicial neutrality since time immemorial (or at least since the demise of the Stuarts). Indeed, retribution very soon descended upon him and within months, Gibson (as well as two of his Glasgow colleagues) were kicked out of office, an episode which we shall consider in detail in Chapter six. However, the above incident when contrasted with those cases where policy-orientated decisions were

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<sup>122</sup> Glasgow Herald, November 11, 1915.  
<sup>123</sup> Ibid.

given by the chairmen, reveals that the history of the Glasgow munitions tribunal is, in part, the history of how the personnel of one tribunal sought alternately to advance, and to repel, the embraces of corporatist law. Corporatism represents an extreme form of functionalism, which in turn is reliant upon disciplined role playing. Tribunal chairmen in Glasgow, to varying degrees, fought hard to further government policy without, as they saw it, compromising their own judicial autonomy and their guardianship of a, by then severely attenuated, rule of law. Thus, where their actions tilted too much towards autonomy and too far from the narrowly defined policy of which they were agents, they failed to exercise their discretion wisely and failed to measure up to the ruthless requirements demanded by a corporatist ministry. Perhaps for some of these chairmen, the tradition of judicial independence proved a more powerful and hypnotic, but unfortunately more hazardous, beacon by which to attempt to navigate the rocks of industrial unrest, than were the insensitive dictates of autocratic law. In this respect, such noble sentiments were worthless to a corporatist elite, whose demands for discipline, commitment and a limited predictability, embraced both their own local administrators, as well as the munitions workers themselves. For Hinton,<sup>124</sup> the shop stewards' movement represented a revolt against the servile state. It is arguable that the activities of the unfortunate Glasgow tribunal chairmen before their "deportation", was a revolt against an autocratic department of state conceived in comparable, if in conceptually distinct, terms.

A corporatist strategy thus provides a working, analytical framework within which to evaluate wartime government labour policy as

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<sup>124</sup>Hinton, op. cit., p.78.



manifested through the munitions code. Unfortunately for the government, such a neat scheme was bound to encounter severe strains in its application. The roots of these difficulties are of course located in the sudden transformation of an industrial relations system which by 1914, having already assumed a voluntarist, non-legal character, (appendix two; infra) found itself in 1915 constricted by laws. It is to be found, also, in the unrealistic assumptions underlying corporatist theory, especially in the belief that consensus could be maintained in an environment where workers were subject to economic and social privation, and where a trade union leadership adopted the perspective of the state in respect to most (but not all) central questions of labour control, while elements of the membership pursued different goals, the most common of which was possibly the straightforward demand for "fair treatment".

Third, law itself possesses qualities which may (but will not inevitably)<sup>125</sup> render it inappropriate as an instrument designed to modify industrial behaviour. With its strong emphasis on claims of right, rather than on claims of interest, the structure of law contrasts sharply with the more open-textured pattern of industrial relations under "collective laissez-faire".<sup>126</sup> Such is certainly the case within a liberal-democratic regime. But it may be argued that laws which reflect highly centralized corporatist direction, expressed in relatively unambiguous terms, are similarly liable in particular circumstances, to excessively rigid enforcement. The resultant

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<sup>125</sup> Thus High Court injunctions ordering unions or union officials to cease instructing "unlawful" industrial action tend to be obeyed. Often, this disposes of the dispute in the employer's favour. Alternatively, "guerrilla" tactics might be embarked upon by union members; or in other ways, the dispute might be prolonged, with the legal proceedings having resolved nothing.

<sup>126</sup> See note 52 (supra).

explosions in militancy during the First World War, such as those following the Fairfield shipwrights' prosecution or following even the threat by employers to mobilize the law (Chapter four, infra), are not the unavoidable outcome of, but are perhaps symptomatic of, the possible structural incompatibility between highly dogmatic laws and those normative expectations shared by mass working class organisations.<sup>127</sup>

During the war, job regulation could no longer remain as flexible, as fragmented and as autonomous from central direction as it had been in the past. Collective bargaining, despite the pressures of wartime shortages, was marked more by its static quality than by its dynamism; though in an inflationary period and with extensive piece-work bargaining, wage drift was not uncommon. Yet trade unionists undoubtedly felt severely constrained by the legal abrogation of their most potent weapon with which to buttress their wage claims. For compulsory arbitration, with its endless delays, was no substitute for the right to strike. The conjunction of law with industrial relations in fact

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<sup>127</sup> Speaking very generally, experience during the present century suggests that corporatist or quasi-corporatist laws such as the Munitions Act or DORA Regulation 1AA (1940) or even the more recent Industrial Relations Act 1971 (which also contained highly individualist elements) are more likely to prompt mass responses to the imposition of severely penal sanctions, such as imprisonment or punitive fines, than liberal-collectivist or liberal-individual measures such as the Employment Acts 1980 and 1982 or common law rulings on contempt of court. For under creeping corporatism, mass mobilization is promoted by governments (despite governments' often simultaneous pursuit of contradictory, though lesser, goals) a fact which both strengthens such organisations while leaving them vulnerable to restrictive legal rulings. This chemistry is frequently lacking in an economic environment, usually accompanied by restrictive monetary policies, where trade union hierarchies are not assiduously courted by governments. In such situations, trade union weakness in general, and in responding to damaging legal judgments in particular, are both cause and effect of government indifference to securing an active relationship based on joint, cooperative efforts designed to attain government policy objectives.



produced a variety of responses by trade unionists at the local level. As is well known, vast numbers of strikes took place in spite of the law; some were even called because of the law,<sup>or</sup> because of its threatened deployment. When the munitions tribunals were called upon to adjudicate in prosecutions or in applications for leaving certificates, trade unionists sought to exploit the hearings in a pragmatic, resourceful fashion; employing intimidating and blustering tactics at one moment, going on to the legal offensive at another, and using tribunal proceedings as a pretext for the pursuit of long-standing workplace grievances. Indeed, as we shall see especially in Chapters four to seven, the opportunism of those employers exploiting the Munitions Act for their own advantage was matched, perhaps more than matched, by the conduct of trade unionists prepared to "battle" within the tribunal. The experience of eventful, even tumultuous, tribunal proceedings, is further evidence of the ambiguous revolt against corporatist tendencies.

### Conclusion

Corporatism as a theory is therefore the point of departure for this study. The term itself was unknown to British society during the war, having been coined in the interwar years; but the phrase, "corporate spirit", was in wide circulation. Nonetheless, when tribunal chairmen, government ministers and civil servants made their appeals for social peace, and where they formulated industrial schemes with the ultimate aim of achieving military victory, they unconsciously did so in the name of the corporatist state. That meant that for the duration of the war, they did not in general deliberately elevate the claims of capital above that of labour. They requisitioned both; perhaps not in equal proportions (indeed, one is scarcely comparing like with like) and perhaps without reflecting on the possibilities thereby made available to employers to exploit the law for their own

domestic ends. Corporatist officials were undoubtedly naive, perhaps recklessly so, in this respect; it may even be claimed (though with difficulty) that they were disingenuous in affecting to trust in the "good faith" of employers not to take advantage of the Munitions Act for objectives other than the furtherance of munitions output. They were not, however, conspiratorial in the sense of waging, in conjunction with employers, a wartime offensive against the working class, the purpose of which was to destroy trades unionism and to leave private employers undisputed masters in their own establishments. Employers' disciplinary excesses, and especially their abuses of the leaving certificate scheme, were, after all, the subject of further legislative adjustments deemed necessary to restore the corporatist spirit of unity and order. In pursuit of a moral crusade, corporatists were prepared to contemplate and to frame legislative proposals to curb the freedom of workers or of employers.

Of course, one may legitimately ask, as did Hilaire Belloc, "On whose behalf is the state acquiring these powers of compulsion?"<sup>128</sup> And indeed corporatism may well be a mystifying concept, a mask behind which capitalist "freedom" can thrive at the expense of labour, knowing that it relies on stability, consensus and the marginalisation of issues. Thus inter-class differences are composed over consumption and distribution, not over central questions of investment, ownership and control. One may indeed observe that, though financial losses were suffered, private ownership, broadly speaking, remained intact during - and most certainly after - the war, and that private capitalism reaped huge profits out of the war. Nationalisation did not bring a transformation of society, inaugurating a regime of worker self-management, producing for need, not for profit. The misleadingly named war collectivism -

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<sup>128</sup> Hinton, op.cit. p. 44.



- the temporary expedient of corporatism - brought the "gradual institutionalization of social and economic autocracy", rather than the institutionalisation of social and economic democracy, as the Webbs had envisaged.<sup>129</sup> Thus war collectivism in fact preserved capitalism for the future. For it clearly did not replace it. Arguably, therefore, corporatism and not state ownership - or imperialism - was the highest stage of capitalist development. Thus in respect to state intervention, that from which private capitalism derived benefit, during an otherwise economically disastrous world war for some property owners - even Robert Smillie, the miners' leader, acknowledged the "destruction of wealth which is presently going on"<sup>130</sup> was the direction and sheltering of capital which the state provided, rather than its transfer of ownership out of private hands. For by subordinating munitions industries to the dictates of a state department, and by attempting to impose, quasi-dictatorially, a sense of order and unity on a previously "free" market, the wartime state sought, through corporatist initiatives in strategic spheres of labour-capital relations (initiatives possibly far more pronounced in the case of the Ministry of Munitions than of the Ministry of Labour which was established in December 1916)<sup>131</sup> to ensure a successful return to neo-

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<sup>129</sup>Keenoy, op.cit., p. 193.

<sup>130</sup>Winter, op.cit., p. 208.

<sup>131</sup>Lowe's denial of the usefulness of the concept of "corporate bias" espoused by Middlemas in explaining the relative social stability of inter-war Britain, probably derives from his focusing upon the activities of the Ministry of Labour which was not, of course, a sponsoring department. Even the nuances of its wartime policies after December 1916 probably sharply distinguished it from the approach of the Ministry of Munitions. Middlemas, however, looked at the evidence, "from the standpoint of Cabinet, rather than the civil service, of the senior leadership and staffs of employers' organisations and TUC rather than the generality of trade associations and individual unions...." See the debate between Lowe and Middlemas in SSRC, Newsletter No. 50, November 1983, pp 17-21. As should by now be apparent, we favour a modified version of "corporate bias" as the organising framework within which to explore munitions policy.

classical market economics in the post-war world. ~~.....~~

The future might have been otherwise. On the one hand, the visionary conceit which Lloyd George could never resist displaying, led him on one occasion in Parliament in 1916 to declare,<sup>132</sup>

"Whatever my hon. Friends may say to the contrary, I believe there is a time coming when the Munitions Act and the Defence of the Realm Act will be regarded as tremendous leaps forward in the social and industrial world. The power which I took to take control of the workshops and to regulate what work should be done, the power to organise our industrial system, the power to limit profits and ... to declare a minimum wage in over 2,200 controlled establishments, with 1,250,000 and very soon 1,500,000 workers, and to see that there shall be no sweating - I repeat to my hon. Friend that all these things will be regarded one day, in spite of two or three things which may be considered as blemishes in the Act, as landmarks in a great industrial revolution."

Some, of course, might interpret such a pronouncement as heralding a peacetime organisation of industry as undemocratic as that inaugurated by the first industrial revolution. Yet the revolutionary potential offered by corporatism has been suggested in recent literature. Thus, Newman has argued that,<sup>133</sup>

"Ideally, Marxism looks forward to a social condition where bourgeois legal norms of abstract rights and duties, conceived in terms of individual juridical subjects, have found themselves superseded by priorities deriving from socio-economic considerations, with concern of community interests the primary factor. Paradoxically, while possibly even more firmly embedded within the logic of capitalism's then preceding comparable forms, corporatism thus offers the closest approximation to this ideal yet realized." <sup>134</sup>

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<sup>132</sup>H.C. Debates, 5th Series, Vol. 78, col. 929, January 4, 1916.

<sup>133</sup>Newman, op.cit., p.176.

<sup>134</sup>These ideas possess a close affinity to those recently advanced by Kamenka and Tay who have traced a paradigm shift over time from what they call Gemeinschaft-type law to Gesellschaft-type law, and finally to bureaucratic-administrative type law. They explain that Gemeinschaft law "takes for its fundamental presupposition and concern the organic community. Gesellschaft-type law takes for its fundamental presupposition and concern the atomic individual, theoretically for the purposes of law - free and self-determined, limited only by the rights of other individuals. Cont'd/.....



A distinctive economico-legal regime which can capture the imagination of the architect of the Munitions Act and whose theoretical construct has recently been acclaimed for its close affinity to the "ideal" of Marxism, does indeed appear to possess intriguing and paradoxical qualities. The fact remains that during the war, corporatist law exhibited a blunt restrictiveness on the one hand, and flexibility and opportunistic scope on the other. Thus were to be amply displayed from 1915 to 1921, the "two faces" of the Munitions Act.

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134 (cont'd) These two "ideal types" of law necessarily stand in opposition to each other, though in any actual legal system at any particular time both strains will be present and each type may have to make accommodations to the other. In the bureaucratic-administrative type of regulation, the presupposition and concern is neither an organic human community nor an atomic individual; it is a non-human ruling interest, public policy, or on-going activity, of which human beings and individuals are subordinates, functionaries, or carriers". See Eugene Kamenka and Alice Erh-Soon Tay, "Social Traditions, Legal Traditions", in Kamenka and Tay (eds.) Law and Social Control (London: Edward Arnold, 1980), ch. 1, at p.19.

## CHAPTER TWO

### Amending the Munitions Act 1915

#### Introduction

We looked, in the opening chapter, at the enactment of the Munitions Act in early July 1915, concentrating upon the corporatist features which characterised its provisions. Indeed, since the gradual emergence of the measure from its origins in the minds of civil servants and government advisers some months earlier has received the close attention of other historians such as Davidson and Wrigley, as well as of the official historians of the Ministry of Munitions, we propose to shift the focus, in the present chapter, to the campaign to amend the 1915 Act. In the course of this examination, less emphasis will be placed on criticisms of the leaving certificate scheme than is otherwise appropriate, as this aspect will be covered more fully in chapter nine.

Theoretical discussion of legislation has, in the past, addressed inter alia the genesis and eventual promulgation of particular statutes. Building on this orientation to "emergence studies", we believe that the insights available may be as relevant to amendment campaigns as to the originating statute itself. Thus where Becker, for example, refers to the "natural history of a rule",<sup>1</sup> that is, to the generic or typical features associated with its enactment, his observations may also be pertinent to the history of attempts to amend or repeal that rule.

Among the well-established theoretical insights to which reference may be made, prominence (if not necessarily pride of place) may be

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<sup>1</sup>Howard Becker, Outsiders (New York: Free Press, 1973) p 129



given to Oliver MacDonagh's "pressure of events" interpretation. As is widely known, this is built upon his famous five-stage model from "discovery" of an "evil" to its administrative solution by means of legislative enactment. MacDonagh's formulation attracted, in turn, the criticism of those who pointed to the influence of ideas as the forcing-house of change. The nineteenth century "revolution" in government was of course the guinea pig upon which these competing hypotheses were tested. Latterly John Goldthorpe has sought to place emphasis on the role of social movements in galvanising legal reforms, suggesting how different interest groups might vie with one another in a pluralistic struggle for success<sup>2</sup>.

Refinements to these approaches might be suggested. First, success might not necessarily be measured in instrumental or in economic terms, but also (or alternatively) in terms of enhanced prestige or of social rehabilitation in the eyes of a constituency, be it limited or wide. Thus success might be symbolic<sup>3</sup> of the claimed superiority of a particular set of values, as has been suggested in the case of the widely documented example of the Prohibition campaigners in the United States during the 1920s, for whom abstinence,

"... became a politically significant focus for the conflicts between Protestant and Catholic, rural and urban, native and immigrant, middle class and lower

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<sup>2</sup>These approaches have all been summarised briefly in Peter W.J. Bartrip, "Public Opinion and Law Enforcement: The Ticket-of-Leave Scares in Mid-Victorian Britain", in Victor Bailey (ed.) Policing and Punishment in Nineteenth Century Britain (London: Croom Helm, 1981) pp 150-181, at pp 150-2. In his own study of a specific mid-nineteenth century penal reform, Bartrip favours a "pressure of events" interpretation.

<sup>3</sup>The "symbolism" of the dilution provisions of the Munitions Act is suggested in chapter eleven.

class in American society. The political conflict lay in the efforts of an abstinent Protestant middle class to control the public affirmation of morality in drinking. Victory or defeat were consequently symbolic of the status and power of the cultures opposing each other. Legal affirmation or rejection is thus important in what it symbolizes as well or instead of what it controls. Even if the law is broken, it was clear whose law it was"<sup>4</sup>.

Yet while, for example, the largely abortive efforts of the shipbuilding employers - themselves no abstainers - to enforce abstinence among their workforces during the war (see chapter eight, infra) faintly echoes the above description, nonetheless, it is suggested, there does exist a limited "symbolic dimension" to the Munitions Act which is relevant to the present chapter. Thus the effort of the trade union leadership to rehabilitate their reputation among their membership after their earlier misjudgments in supporting the measure of July 1915 (chapter one, infra), constituted as much a symbolic quest (from around mid-October 1915) as it did an effort to secure, through legislative amendment, instrumental gains.

Indeed, as the ministry's official historians remarked on the Fairfield shipwrights' episode, the disapproval of the strikers on the part of the Shipwrights' Association officials was,

"... generally shared by the official representatives of the other Unions. But the movement started by the rank and file soon overcame the resistance of their leaders."<sup>5</sup>

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<sup>4</sup> Joseph Gusfield, "Moral Passage: The Symbolic Process in Public Designations of Deviance", in C.A. Bersani (ed.) Crime and Delinquency (London: Macmillan, 1970) p 67, cited in W.G. Carson, "Symbolic and Instrumental Dimensions of Early Factory Legislation", in R. Hood (ed.) Crime, Criminology and Public Policy: Essays in honour of Sir Leon Radzinowicz (London: Heinemann, 1974) at p 111. Gusfield's principal work is Symbolic Crusade (Urbana: University of Illinois Press, 1963).

<sup>5</sup> OHMM, Vol. IV, Part 2, p 54.



Thus it is submitted that this conversion to reformist demands on the part of the officials was undertaken not solely out of solicitude for their grievously suffering members, nor even to advance the "national interest", but was in part undergone because the rank-and-file pressure exerted on them posed a challenge not just to their authority as leaders but also to their personal esteem.

Yet whereas symbolic crusades might be embarked upon as an end in themselves - perhaps the Trade Union and Trade Disputes Act 1927<sup>6</sup> in the wake of the General Strike, or the legislation against video "nasties" or against child pornography following well-publicised outrages or scandals<sup>7</sup> might be cited - another writer, W.G. Carson, has also drawn attention to the existence of symbolic meaning as an emergent property of interactional sequences<sup>8</sup>. It is submitted, therefore, that the role of the patriotic trade union leadership in the reform campaign cannot be fully comprehended unless it is

<sup>6</sup>Cf., Alan Anderson, "The Political Symbolism of the Labour Laws", Bulletin of the Society for the Study of Labour History, No.23, Autumn 1971, pp 13-15; ibid., "The Labour Laws and the Cabinet Legislative Committee of 1926-27", ibid., pp 37-54. A leading periodical remarked at the time that the introduction of the Trade Disputes Bill 1927 represented a "show of bad temper on the part of the Conservatives". See the Economist, May 7, 1927.

<sup>7</sup>See the discussion of the enactment of the Protection of Children Act 1978 and the role of Mrs. Mary Whitehouse's "National Viewers' and Listeners' Association" in its promulgation, in the Sunday Times, February 12, 1978. Cf., also the measure proposed by Graham Bright M.P. in 1984 to outlaw "video nasties". It is sometimes the case that law reform is unnecessary, since existing laws such as the Obscene Publications Act 1959 in the above examples may be as effective as the proposed measure. Demands to prohibit "violent picketing" usually neglect this point.

<sup>8</sup>Carson, op.cit., p 113.

recognised that their agitation for amendment, so soon after their fulsome praise for the first Munitions Act, was designed, in part, for domestic consumption. That is, the restoration of their image among the rank-and-file, as stout defenders of specific interest groups, "emerged", in conjunction with the belated pursuit of "equality, equity and reciprocity"<sup>9</sup> (in the words of Alexander Wilkie of the Shipwrights' Association), as an integral feature of their campaign to lessen the iniquities of an act which had recently received their imprimatur.

But the initiative was not theirs. Indeed, it is necessary to raise a second refinement to the "causal triumvirate: ideas, movements and events"<sup>10</sup>, cited earlier. That is the role of the "moral entrepreneur" in fostering legislative change. For it is the concept of the moral entrepreneur which may straddle all three competing interpretations of statutory reform. According to Becker<sup>11</sup> it is the moral entrepreneur who mobilizes the movement from a general value to a specific act of enforcement. Taking as his example the campaign of the US Federal Board of Narcotics to prohibit marihuana smoking in the 1930s, he shows how public interest in reform was stimulated by vivid (and lurid) newspaper reports on the evils of abuse of marihuana, thus generating publicity which served to magnify the extent of the evil.

<sup>9</sup>SSA, Quarterly Report, October - December 1915, p 80, quoting Wilkie's speech in the Commons on January 4, 1916. "Reciprocity" was identified by Lloyd George as a feature of trade union demands made at the conference of November 30. See Glasgow Herald, December 1, 1915. Tinkering with aspects of the leaving certificate scheme, as we shall see, was granted in the name of reciprocity. The principle of joint control was, however, peremptorily dismissed. See also chapter eight (infra) on proposals for joint control of discipline.

<sup>10</sup>Bartrip, op.cit., p 150

<sup>11</sup>Becker, op.cit., passim.



The moral entrepreneur thus also feeds the campaign for reform by providing journalistic copy and by enlisting the support of other interested groups. A favourable public attitude to the proposed rule is thereby cultivated and the "problem" becomes publicly recognised. A crucial feature of the campaign is additionally the promotion of some general value attracting broad approval by which the proposals might be legitimized. In the case of marihuana legislation, the value of "self-control" and the elimination of "illicit pleasure" (the state of ecstasy induced by marihuana use<sup>12</sup>) significantly provided the appropriate legitimizing values underpinning the campaign. But, significantly, such values emerged only as an afterthought; indeed one might say as a post hoc rationalization. For as Becker explains, a rule may be drawn up (or it may be added, a proposal framed) simply to serve a special interest, and only latterly will a rationale for the rule be found in some general value. As will be seen, the emergence of the Munitions Amendment Act, suitably premised on a widely-approved principle, copied many (though not all) of the features which characterized the "natural history" of the Marihuana Tax Act.

Yet taken in isolation, each one of the above interpretative frameworks is deficient on its own in providing a comprehensive explanation for the emergence of the Amendment Act in 1916. For example, it is true that the crisis proportion of the "pressure of events" on Clydeside galvanized the government into moving far beyond its initial intention of framing only technical amendments on the largely spontaneous

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<sup>12</sup> See also Timothy Leary, The Politics of Ecstasy (London: Paladin, 1970). Dr. Leary is of course the controversial ex-Harvard lecturer who campaigned in the 1960s for the legalization of marihuana smoking. In September 1983, he was refused permission to enter Britain as a visitor. See the Guardian, September 6, 1983.

suggestions of its own civil servants<sup>13</sup>. Nonetheless, the influence of those radical critics, activists and journalists, who from the outset sought to propagate an alternative perspective to the 1915 Act, or of those Guild Socialists such as Cole and Mellor who were undoubtedly instrumental in framing specific reform proposals, cannot be overlooked<sup>14</sup>. Yet even where the "pressure of events" seemed in its turn to generate a genuine mass-movement solidly united behind the banner of reform, the evidence suggests that one institution within that social formation, the Amalgamated Society of Engineers, could, on its own, extract more gains following its meeting with Lloyd George on December 31 than a representative conference of 55 trade unions which had been addressed by the Minister a month previously<sup>15</sup>.

Notwithstanding, if we were to apply to our study the conceptual apparatus of the moral entrepreneur with a view to monitor the "natural history" of the Amendment Act, we would certainly discover interesting parallels. Thus the extensive publicity of abuses widely reported in the press and the role (though not an innovatory one) of a state agency, the Balfour-Macassey Commission, would be identified. Most significantly, the broadening of the constituency demanding reform from narrow, sectional, politicized groupings to a wider range of interests not

<sup>13</sup> See MUN 5/20/221.1/40 "Munitions of War Act 1915 - Amending Bill" by J.C. Miles, November 17, 1915; OHMM, Vol. IV, Part II, p 67.

<sup>14</sup> See for example Branko Pribicevic, The Shop Stewards' Movement and Workers' Control 1910-1922 (Oxford: Basil Blackwell, 1959) pp 45-8; Nation, October 16, 1915, pp 109-111 (Cole); ibid., December 18, 1915, p 442 (Mellor); Winter, Socialism and the Challenge of War, op.cit., p 136.

<sup>15</sup> The prime importance of converting the ASE officials nationally to the dilution campaign is the obvious explanation of this "bargained corporatism". For the union's "clout" in the negotiations over the Amendment Bill, see ASE, Monthly Journal and Report, March 1916, pp 65-67, which reprinted a lengthy item from the Labour Leader.



confined to the designated boundaries of the labour movement gradually evolved. At the same time, there emerged a new legitimizing value in the campaign. Instead of proving harmful to a distinct class interest, the Munitions Act was now alleged to be harmful to the national interest. Yet the analogy with Becker's Marihuana Tax Act, it seems, can be taken no further. For, if not exactly like Hamlet without the Prince of Denmark, the narrative of events up to the passing of the Amendment Act appears to lack the crucial dramatis persona of the moral entrepreneur himself. What there was, rather, was what one might call an "immoral entrepreneur", or a succession of immoral entrepreneurs, be they the CWC, a body called the Trade Union Rights Committee, Cole and Mellor and other journalists and activists, who instigated a campaign for reform subsequently taken up by the more "respectable" elements within the labour movement with whom the ministry would deign to confer. Thus, unlike Becker's manipulator, the idealist originators of the 1916 Act, whose activities were soon overtaken by events, were basically resourceless, or unpopular, or unorganized.

The truth is that no single explanatory framework could adequately match the complex chain of events which culminated in the reform of the Munitions Act just six short months after its original enactment. For as we shall see in the following account, each of the approaches can claim to possess explanatory value at different points in the narrative. For example, at one point, reform ideas based on Guild Socialist models of workers' control might be floated<sup>16</sup>. At another, the pressure of events was sweeping along the trade union leadership in its raging current, with the latter frantically attempting, on the basis of mixed

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<sup>16</sup> See note 14 (supra)

motives, to assume control and leadership over the direction assumed by a mass movement for change which had been spontaneously building up behind them<sup>17</sup>.

### "Immoral" Entrepreneurs

The Munitions Act attracted fierce criticism from its very inception even if, as we saw in chapter one, the conspiracy theory explaining its enactment is partially flawed. Nonetheless what the Act did entail for Labour was analysed, at the outset, in both specific and in general terms. At the level of detailed criticism, the Herald<sup>18</sup> warned that in controlled establishments all trade union rules were to "go by the board, apparently at the mere request of the boss" and anyone refusing to do as he was ordered was to be fined. It went on to remind its readers that anyone suggesting that certain rules or practices should be retained was to be fined up to £50<sup>19</sup> and that compulsory arbitration, for which it claimed no case had been made out, was "here to stay"<sup>20</sup>. Nor would this "Workers' Slavery Bill", as it described the measure in the words of Robert Smillie, speed up production "one whit", but would only cause strife and bitterness thereby hindering arms supply.

<sup>17</sup>The Clyde trade union officials' sudden revival of an obsolete local joint trades "vigilance committee" (a title similar to that of the existing unofficial body) in the midst of the Fairfield Shipwrights' controversy is an illustration. See Hinton, op.cit., pp 116-7. The full text of the officials' circular to the rank and file is in the Glasgow Herald, October 16, 1915.

<sup>18</sup>Herald, July 3, 1915.

<sup>19</sup>For exaggerated trade union fears of the potency of this particular legal provision, see chapter eleven (infra). Of course DORA was always lurking in the background and might be wheeled out in certain cases, for example, to deport the CWC leadership. But whether DORA could have been pressed into service to impose dilution in the factories must remain open to question. Negotiations between shop stewards and the Clyde dilution commissioners did of course lead to agreement in some establishments. How "voluntary" these negotiations were, given the background of deportations, must also remain a matter of dispute.

<sup>20</sup>Its vision of the permanent corporatist state was of course premature.



It also echoed the view expressed in Orage's New Age which had singled out the scheme of war munitions volunteers (WMVs) as posing the gravest threat to organized labour. By offering the prospect of a ready supply of blackleg labour to uncontrolled establishments, profiteers would reap the benefit, the New Age had argued<sup>21</sup>. The Herald reflected this concern, but took it a stage further, arguing that even trade unionists who became volunteers could no longer rely on the strength of their organizations to protect them against despotic management. Thus divine intervention was sought.

"Heaven help them!" declared the Herald<sup>22</sup>. "They are to be delivered over to a tribunal on which the Trade Union is not represented, and are to be forced to carry out any and every order ... [They will] no longer be Trade Unionists but industrial soldiers subject to law and to commands. Discipline, instead of being in the hands of the unions, will be in the hands of the employers and an employer's court."

Hinting at a more theoretical critique, G.D.H. Cole<sup>23</sup> concluded that the Act was a,

"... highly dangerous measure, and nonetheless dangerous because Mr. Lloyd George succeeded in persuading many of the trade union leaders to accept it."

Thus the "rout of the Labour forces" would ironically be accomplished with the aid and succour of most of the trade union leadership themselves. In this, Cole undoubtedly saw that corporatist class

<sup>21</sup>The Herald failed to note the date of the New Age item which it was reporting.

<sup>22</sup>Herald, July 3, 1915. Again, it need not have worried unduly. The tribunals had few dealings with WMVs and their industrial grievances seemed principally confined to the matter of subsistence and travelling allowances.

<sup>23</sup>G.D.H. Cole, Labour in Wartime (London: Bell, 1915) pp 214-5.

collaboration threatened to render trade unionism an endangered species, a view endorsed by only a minority of trade unionists and labour journalists before the deluge of tribunal prosecutions and controversial workshop changes prompted second thoughts among the unsuspecting craftsmen and their leaders.

Of course during this highly speculative period immediately following the passage of the Act, voices from the left were heard calling for direct action. For example, the Trade Union Rights Committee (TURC) established in London on July 12, issued a manifesto designed to mobilize support against all coercive legislation and to organize a struggle within the trade unions to regain what it described as their "lost rights and freedoms"<sup>24</sup>. Yet its call for the defence and consolidation of trade unions together with the restoration of their rights and resistance to further capitalist encroachments was typically long on rhetoric and short on practicalities. Predictably vilified in the patriotic press and rebuffed by trade union leaders such as J.S. Brownlie and Harry Gosling<sup>25</sup>, its blatant appeal for strike action against the Munitions Act was not shared by fellow critics of the legislation. Thus,

"To talk as some are doing, about a general strike against the Munitions Act", wrote the Herald<sup>26</sup>, "is very heroic, but unfortunately very foolish. Why should we disguise for ourselves the fact that never before was Labour so divided, so impotent and so content to let the future go hang?"

<sup>24</sup> Cotton Factory Times, August 6, 1915, for contents of manifesto. According to the Trade Unionist, January 1916, 20,000 copies were printed and issued.

<sup>25</sup> See the Herald, August 14, 21, 1915 for these points. For the response of the TURC, see the Seaman, August 27, 1915; Nation, August 21, 1915, p 678.

<sup>26</sup> Herald, July 10, 1915. Clearly, the TURC as an organization could not have been responsible for such a call, given that it was only established a few days after the Herald's remarks.



A general strike, it asserted, would only end in disaster (in fact the hugely successful South Wales miners' strike was only a few days off). In its place, Labour had to "wake up" and be more "practical", to see whether "something cannot be done with the existing machinery"<sup>27</sup>.

Thus an avowedly propagandist body such as the Trade Union Rights Committee represented the negative, rejectionist strand of opposition to the Act. As such it was doomed to irrelevance, being grounded neither in practical politics nor in practical industrialism<sup>28</sup>. It is difficult therefore to identify a close affinity between that body and the CWC, as one writer has recently asserted<sup>29</sup>,

The Herald's call for a more constructive alternative during the very early days of the Act was, however, taken up in the following week's issue by Cole and Mellor, the latter, ironically, a signatory to the manifesto of the TURC<sup>30</sup>. Under the headline "Trade Unionism - Dead?"<sup>31</sup>, they asked whether anything could be salvaged from the wreckage caused by Lloyd George's "confidence trick". The union leaders, they suggested, had meekly succumbed to capitalist aggression, receiving nothing in return. Instead, trade unionists faced a gloomy future of speed-ups through the rapid Americanization of production, as well as a mobile army of blacklegs and a system of fines deducted by employers from wages. Since the main battle against the Act was lost, the union rank-

<sup>27</sup>Cf., the similar remarks in G.D.H. Cole and W. Mellor, "Labour After the War: Preparation is Half the Battle", Trade Union Worker, March 1916, pp 9-10.

<sup>28</sup>A number of trades councils did lend their support but to no effect. See Alan Clinton, The Trade Union Rank and File: Trades Councils in Britain, 1900-1940 (Manchester: University Press, 1976) p 121.

<sup>29</sup>R.M. Drislane, "Trade Union Leaders and Politics, 1910-1922", University of London Ph.D., 1975, p 151.

<sup>30</sup>Other signatories had included Tom Quelch and the ubiquitous W.F. Watson.

<sup>31</sup>Herald, July 17, 1915.

and-file were urged to press for the reorganization of trade unionism itself.

"Out of chaos may come a new birth. The old unionism was not so marvellous a product that we cannot dream of something better to take its place. Only - it is up to us."<sup>32</sup>

Here, surely, Cole and Mellor had in mind the experiment of the North-East Coast Armaments Committee, a joint body of employers and trade unionists, entrusted with wide if somewhat undefined powers which jointly administered munitions production on a representative basis from April 1915 until wound up by Lloyd George about 3½ months later<sup>33</sup>. As a rudimentary, embryonic and shortlived foretaste of what Guild Socialism might offer, the experiment undoubtedly inspired the reform proposals for local joint committees to which even the union leadership became converted in the last quarter of 1915. At least, in the absence of a solid foundation of empirical data illustrating the working of the Munitions Act in fact and not in theory, the prescription for joint control offered a reform perspective that on the basis of precedent was not wholly unrealistic.

In the event, as we shall shortly see, the alarm signals from the workshops and shipyards would rapidly be picked up. The anxieties over the prospects would quickly give way to bitter complaint, and the inroads on munitions workers' freedoms would soon be acutely experienced. None the less, preparations intended to familiarise trade unionists

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<sup>32</sup>Ibid.

<sup>33</sup>G.D.H. Cole, Workshop Organisation (Oxford: Clarendon Press, 1923) p 89; ibid., Trade Unionism and Munitions (Oxford: Clarendon Press, 1923) p 124.



with the provisions of the Act were concurrently being made. The ASE, for example, conducted a number of meetings at frequent intervals throughout the country<sup>34</sup>. Trades councils such as the Edinburgh Trades Council<sup>35</sup>, also organized meetings to explain the Act's provisions, though not every meeting devoted to a study of the Act was filled to capacity. On one occasion, for example, the Fabian Research Department invited J.R. Clynes to speak about the measure in November 1915. Though the Fabian News<sup>36</sup> sympathetically reported that "Partly owing to the weather, the meeting was poorly attended", Robin Page Arnot, some years later, gave a more accurate account, revealing that Clynes,

"... arrived from Oldham in a tempest of rain and found himself faced by a select audience consisting solely of Beatrice and Sidney Webb, Edward R. Pease, Bernard Shaw and a couple of other Fabians, including the Author."<sup>37</sup>

The intelligence gathering activities of the Department were in fact expanded to include monitoring of the progress and impact of the Act. Thus,

"A record was made of all prosecutions and other cases under the Munitions Act. Questions were prepared for the House of Commons followed by material to be used in

<sup>34</sup>A conference of district delegates was held on July 10, while mass meetings of the membership were held in, inter alia, Dukinfield, Oldham, Bolton, Liverpool, Portsmouth, Leigh and Ashton. See ASE, Monthly Journal and Report, August 1915, p 15; ibid., September 1915, pp 23-4; ibid., October 1915, p 33; ibid., December 1915, pp 33, 39, 42; ibid., January 1916, pp 39, 43.

<sup>35</sup>Edinburgh and District Trades Council, Forty-ninth Annual Report ... for Year Ending 31st March 1916, p 2.

<sup>36</sup>Fabian News, Vol. 27, December 1915, p 2.

<sup>37</sup>R. Page Arnot, History of the Labour Research Department (London: LRD, 1976) p 14. Cf., LRD, Twenty-one Years On (London: LRD, 1933).

debates; draft Amendments and Bills were circulated; and in other ways a campaign against the repressive clauses of the Munitions Act was carried on, in conjunction with the Executives of the Unions."<sup>38</sup>

G.D.H. Cole, temporarily employed by the ASE at the time, was of course deeply immersed in these activities, prompting the celebrated remark by Margaret Cole that her husband had,

"... secured exemption from military service by doing his best to make the Munitions Act unworkable."<sup>39</sup>

In fact, it is probably more true to say that subsequent exertions were mostly directed towards making the Act work on terms as favourable as could be extracted from government and employers.

#### The "Pressure of Events"

Such efforts were, naturally, aided by the stream of reports and complaints which rapidly began to emerge on the effects of the Act at workshop and shipyard level. Though fuller accounts of the impact of the legislation at local level will be presented in subsequent chapters, a few early illustrations will indicate the typical challenge to existing working conditions which the new Act posed for munitions workers. For example, the Friendly Society of Iron-Founders reported in early August that non-society men had been started in union shops in Halifax and Loughborough. It was agreed by the union's national executive council that the Loughborough branch should "move with caution" in approaching the management or the non-unionists, while the general secretary would write to the Ministry of Munitions concerning the Halifax question. In the general case, the executive advised, altera-

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<sup>38</sup>Page Arnot, op.cit. These records can no longer be traced in the offices of the LRD.

<sup>39</sup>Cited in L.P. Carpenter, G.D.H. Cole (London: Cambridge University Press, 1973) p 35.



tions in working conditions were to be reported to branch committees in order to arrange conferences with employers, while in the case of prosecutions, the union's solicitors were to be instructed<sup>40</sup>.

The introduction of non-unionists into a closed shop was indeed one of the first results of the legislation and led to some industrial disorder such as at Thorneycrofts, as we saw in chapter one. But wider concerns were soon expressed. Thus a succession of district delegates of the ASE were soon filling their monthly reports with expressions of outrage. From Manchester, for example, the district delegate, Joseph Binns, noted that by August<sup>41</sup>,

"The Munitions Tribunals are now in full swing. The activities of several firms in this area to take every advantage of the provisions of the Act are specially noticeable. Our members ought to be equally active and ensure that the application is equitable by insisting upon the firms also complying with clauses relative to changes, etc., ... our members would be well advised (1) to object to any changes being introduced "as to rates of wages, hours of work, or otherwise as to terms and conditions of, or affecting, employment, etc.", unless the statutory notice has been given to the recognized authorities and opportunities have been given to discuss such changes; (2) we should also refrain from leaving off work, protest to the firm against unfair impositions and then formulate a charge for the tribunal to consider and place the employer as defendant."

From Sheffield, it was reported<sup>42</sup> that the men were "indignant" at the arbitrary rules posted up in the workshops, to intimate that fines would be imposed for lost time and for other offences. There had been the "greatest difficulty" in dissuading the members from downing tools until

<sup>40</sup> Friendly Society of Iron-Founders, Executive Committee Minutes, August 17, 10-14, 25, 1915 (Archive Ref: MSS41/FSIF/1/14, Modern Records Centre, University of Warwick).

<sup>41</sup> ASE, Monthly Journal and Report, September 1915, p 23.

<sup>42</sup> Ibid., p 25.

an opportunity for consulting with the employers had been granted.

Moreover, the district delegate, Arthur Shaw, concluded that,

"... considering the strenuous efforts and the abnormal hours the men are working, the posting of notices is looked upon as an insult to their intelligence, and is bitterly resented."<sup>43</sup>

The West Country official of the ASE, W.H. Miller, confronted with a number of prosecutions by employers, advised that,<sup>44</sup>

"In my opinion, it will be wise for our members to keep to the practices in existence before the war for the settlement of differences arising in the workshops, and make this new Act thereby a dead letter."

Two months later he reported that his experience of the tribunals during this period merely,

"confirms the policy that I have advocated, where possible, that we should keep away from them as much as possible."<sup>45</sup>

Of course, the problem was that the new works rules and tribunals would not simply go away. Thus, whether the advice to members was to test every management step against the small-print of the Act, or to insist upon the status quo ante and to pretend that the Act never existed, the difference was more a matter of form than of substance. For there is no doubting that the cry of "Business as usual" was a delusion. In short, the matter of statutory implementation was beyond the control of the unions and their members, as events in Liverpool, for example, dramatically showed.

<sup>43</sup>Ibid.

<sup>44</sup>Ibid., p' 33.

<sup>45</sup>Ibid., November 1915, p 60.



From there, the local ASE district delegate, R.O. Jones, had reported to his members in June 1915, that,<sup>46</sup>

"The question of the hour is the Munitions of War Bill, with its far-reaching proposals. It is the neatest bit of class legislation ever devised. The Trade Union officials, one cannot term them leaders, have been hypnotised into bartering away the rights of the rank and file without so much as consulting them. Men are being called upon to enrol themselves as volunteers and render their best service, whilst the employer whose service they are leaving can please himself about re-employing the men at the termination of the war. Unless this is safeguarded by amendment, one can only look upon the Bill, its authors and sponsors, as an industrial calamity."

Two months later, his fears apparently realised, Jones lamented that,<sup>47</sup>

"As matters stand, workmen are being dragooned into doing things, whilst the employer can chop and change according to the state of his liver. Trade Unionists have been requested to give up many things; it would be a pleasure to find some employers giving up their dirty methods. The sacrifices are being extracted all from the worker's side."

Among the major employers in the district, the legal opportunities were being eagerly exploited by Cammell Laird shipyard at Birkenhead. The firm had refused to pay a 4/- advance agreed for the district, resulting in a widespread ban on overtime and had responded by posting yard disciplinary rules which indicated their intention to impose fines for loitering and for similar offences. Such provocative action drew strong condemnation from the local ASE official whose combative attitude had scarcely been disguised.

"One can imagine", he reported, "the illimitable interpretation that can be placed upon a term of that description, particularly to an imaginative mind. That the whole business is both fatuous and silly, time will tell."<sup>48</sup>

<sup>46</sup>Ibid., July 1915, p 28.

<sup>47</sup>Ibid., September 1915, p 21.

<sup>48</sup>Ibid.

That time was not long in arriving. First, half a dozen employees of the shipyard were fined £1 each for having refused to work overtime. In consequence, they assured the tribunal that they would in future work a reasonable amount if required<sup>49</sup>. A few days later, 22 engine fitters employed at the yard also received the same sentence. Indeed, that very day, the company had embarked upon the prosecution of another 245 men, having been urged to do so by the Ministry of Munitions on the ground that, as explained by the firm, "Men of a certain type would never realise the war without a prosecution [sic]"<sup>50</sup>. Though these particular summonses were in fact withdrawn on the men's promise to comply with overtime instructions<sup>51</sup>, yet another 69 summonses for persistently losing time were heard a week later against platers, drillers, angle-smiths and apprentices employed at the yard<sup>52</sup>. Except in cases where medical certificates were produced, fines ranging from 5/- to £3 were imposed.

It was this hearing which led to the "scene of indescribable uproar at the close" of the proceedings, to which reference was made in chapter one. The denunciations of both firm and trade union officials indeed

<sup>49</sup>Glasgow Herald, September 6, 1915. Cf. MUN 5/353/349/1, op.cit.

<sup>50</sup>Glasgow Herald, September 10, 1915.

<sup>51</sup>The commitment seems to have been made on behalf of the men by a delegation of union officials including Jones, which appeared to concede that the men's action in refusing overtime was unjustifiable. It is not clear whether in fact the men had been consulted first before the promise was made. If not, then either Jones' rhetoric was hollow or his condemnation of the men's action was intended to pacify the company and tribunal. Subsequent events suggest that the men interpreted the officials' action as a sell-out. See ASE, Monthly Journal and Report, October 1915, p 29; Engineer, October 29, 1915.

<sup>52</sup>Glasgow Herald, September 20, 1915.



continued at a mass meeting on St. George's Plateau immediately after the hearing. But as the experience in the Clyde shipyards also suggests, the demonstrations and uproar disclosed a clear message for the authorities and pointed to how the radical attack on the Munitions Act on class lines would rapidly give way to a broader critique based on the danger posed to the national interest by an insensitive application and usurpation of a public measure for private gain. For we may recall that the company had ruthlessly deployed the Act in order to quell opposition to its refusal to come into line with a district award. Additionally it was in a position to utilise the Act to prevent men from leaving the firm to join other controlled establishments offering improved pay. Thus the rhetoric and language employed by the men reveals a genuine and deep-seated resentment, not directed specifically against a government which passed repressive legislation, but against an employer perceived to be abusing it. Thus both the references to how "British working men" ought to be treated and comparisons with the German military caste (see chapter one, infra), demonstrate a sensitivity to the purported ideals for which the British were fighting the War. Thus if the "pressure of events" was soon to reach its climax on Clydeside, events on Merseyside (and, indeed, major confrontations

elsewhere<sup>53</sup>) were also raising the temperature during these early months.

Whatever political lessons might therefore be drawn from the passing of the Munitions Act, its industrial consequences were now readily apparent. They were, most obviously, the inauguration of work rules permitting employers to harry and harass their employees. As the ASE delegate for North-East England, James Ratcliffe, reported<sup>54</sup>,

"The novelty of the business, however, is in the fines imposed for lost time, disobeying orders, quarrelling and a general want of decorum - all essentials as it seems, in the acceleration of the output."

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<sup>53</sup>The following major tribunal clashes may be mentioned: (1) a subsequently withdrawn prosecution of 28 strikers at Vickers, Barrow in July. See MUN 5/353/349/1; (2) fines imposed on 31 Manchester strikers in the same month. See Woman's Dreadnought, August 7, 1915, p 295; ASE, Monthly Journal and Report, August 1915, p 32; (3) the dismissal, without leaving certificates, of over 100 armour-plate workers at the Manchester works of Armstrong Whitworth in August. See the Nation, September 4, 1915, p 735; Glasgow Herald, September 4, 1915. The irony of John Hodge's Steel Smelters' Union apparently sanctioning a strike in response to the dismissals was not lost on the Forward, which noted Hodge's previous declarations that any strikes at the time were "inconceivable and unthinkable". See the Forward, September 11, 1915; (4) the Thorneycroft strike at Southampton (chapter one infra); (5) a succession of mass prosecutions for striking and for allegedly breaking yard rules in Tyneside shipyards, together with multiple leaving certificate applications. See MUN 5/353/349/1, op.cit., Glasgow Herald, September 9, 27, 29, October 20, November 25, 1915; The Times, September 29, November 3, 1915; R. v Newcastle Munitions Tribunal ex parte Lloyd George, Law Journal, Vol. 50, 1915, p 530 (for this case see Rubin (1977a), op.cit., at p 155; (6) extensive unrest leading to tribunal hearings at Robb, Caledon shipyard at Dundee. See Glasgow Herald, October 1, 16, 1915; Scottish Record Office [SRO] HH31/22, "Memorandum as to the Prosecution of Certain Workmen in the Employ of the Caledon Shipbuilding and Engineering Company, Dundee"; MUN 5/80/341/3, "Clyde Munition Workers: Minutes of Evidence", pp 151-6, 271-6; also T 132/1 and MUN 5/97/349/10 on reimbursement of fines. The above list is not exhaustive and of course omits events in Glasgow.

<sup>54</sup>ASE, Monthly Journal and Report, September 1915, p 22.



The New Statesman<sup>55</sup> did not reckon that the "danger" lay so much in the employers' desire to reorganize their factories. For it detected that the trade union leadership and the workmen generally were "usually even pathetically willing" to give up trade customs where it was suggested they were harming the national interest.

"What causes trouble", it warned, "is the assumption on which employers (and, we fear, also the Munitions Department) are acting, that it is for the employers arbitrarily to impose new rules and for the workmen simply to obey. ... Here's "Industrial Junkerdom" with a vengeance!"

This was the crux of the matter. Labour discipline might be tolerable to the majority of the rank-and-file if essential to the war effort and if comparable sacrifices were made by employers. Instead, employers were seen to be feathering their own nests and the posting of new disciplinary rules without prior consultation with the men was bound to cause resentment. Thus what is crucial is to recognize that the introduction of the new rules was perceived as an unfair and opportunist exploitation of the Act, and as such, immediately destroyed any faith in the equity of the legislative proposals which some of the trade union rank-and-file, as well as officials, may have shared. That is not to say that the officials, to a man, opposed works rules. As we shall see in chapter eight, many voiced severe criticism of their own members' bad timekeeping (while others blamed overwork or poor management planning for the lost time). Yet it should not be forgotten that disciplinary fines were no novelty in a number of trades such as shopkeeping, mining, textiles and shipping where statutes such as the Truck Acts might authorise deductions from wages<sup>56</sup>. As such, they were a well-established part of employers'

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<sup>55</sup>New Statesman, August 7, 1915, p 411.

<sup>56</sup>Ibid., November 13, 1915. Also David Sugarman, J.N.J. Palmer and G.R. Rubin, "Crime, Law and Authority in Nineteenth Century Britain", Middlesex Polytechnic History Journal, Vol.1, Spring-Autumn 1982, pp 28-141, at pp 111-15.

works rules which were liable to be enforced. But the pattern was far from uniform. For though it has been suggested that most firms possessed shop or yard rules, some employers possessed none at all, and where such rules did exist, their enforcement was frequently irregular and anomalous. Thus,

"They were merely a heterogeneous set of orders, dealing in detail with small points of workshop practice, many accidental, some obsolete. Ostensibly they were enforced by fines, suspension or dismissal, but in reality they were frequently in abeyance ... Discipline ... rested on personal authority and unwritten sanctions."<sup>57</sup>

Their sudden revival, and moreover, added potency, thus signalled an end, in many works, to the "indulgency pattern"<sup>58</sup> hitherto prevailing.

Beveridge, indeed, had reported by August 12 that "hundreds" of firms had already posted up new rules under the authority of the Act<sup>59</sup>. Thus it was not only the abrogation of the right to strike or the restriction on labour mobility or even the lifting of craft protections, that constituted a grave challenge to workmen's liberty. It was the prospect of prosecution for petty offences that seemed to pose an immediate threat to millions of munitions workers, craftsmen or unskilled. Thus, as G.D.H. Cole pointed out,

"Unless the workman is as docile as the most down-trodden of slaves, and at the same time as efficient as the best of his class, the tribunal is waiting to receive his money."<sup>60</sup>

<sup>57</sup> Humbert Wolfe, Labour Supply and Regulation (Oxford: Clarendon Press, 1923), p 175.

<sup>58</sup> Alvin Gouldner, Patterns of Industrial Bureaucracy (Glencoe, Ill: Free Press, 1954) for the use of this term.

<sup>59</sup> MUN 5/48/300/9, "Meeting with Shipbuilding Employers' Federation", August 12, 1915.

<sup>60</sup> Nation, November 20, 1915, p 289.



Thenceforth, a torrent of complaints from trade unionists and trade union officials was heaped on the Munitions Act, on the tribunals and upon the employers, with the tribunals commonly perceived as the discredited right arm of the employers' crude attempts to force through their own domestic industrial relations policies. As the experience of Cammell Laird appeared to suggest to contemporaries, prosecutions were undertaken not solely to stifle transient instances of worker misconduct. Rather, the company had clearly decided that the use of the tribunal would further its own wage policy of resistance to the district settlement. Thus the tribunal, far from being a neutral adjudicator, appeared to have been "captured" by a major employer as a means of entrenching that resistance and of legitimizing its stance.

#### General Criticisms

For trade union officials, the passing of the Act inevitably entailed a considerable amount of extra work. The Yorkshire district delegate of the ASE, for example, complained in October that<sup>61</sup>,

"Correspondence arising out of the Munitions Act is increasing to such an extent that if prompt answers have to be made at all, it will shortly mean nearly day and night shifts for the single O.D.D."

Of course, the point was not simply to express sympathy with the official but to emphasise how irritating and unnecessary<sup>62</sup> the provisions were, even where, as the Midlands ASE representative reported<sup>63</sup>,

"Viewed in relation to the large number of men affected, and the extent of the departure from normal industrial conditions, the number of grievances is comparatively small."

<sup>61</sup> ASE, Monthly Journal and Report, October 1915, p 32. By May 1916, the London delegate, A.B. Swales, was complaining that a "staff of clerks" would be necessary to deal with the Munitions Act, the Military Service Act and dilution, were it not for the "excessive" overtime being worked. See ibid., May 1916, p 39.

<sup>62</sup> Cf., ibid., November 1915, p 52 (Sheffield delegate).

<sup>63</sup> Ibid., p 54.

While criticism of the Act by the ASE district delegates varied in its intensity, W.F. Watson, in the Journal's correspondence columns<sup>64</sup>, drew attention to the disparity between Arthur Henderson's National Advisory Committee's defence of the Munitions Act and the experiences reported by the district delegates. Whereas the NAC insisted that the Munitions Act ensured that no loophole existed to enable employers, after the war, to exploit the abnormal wartime conditions in the workshops, Watson complained in his letter that,

"... this month's Journal<sup>65</sup> tells a very different tale. Ten out of the twelve organizers tell us in their reports of the trouble they are having arising out of this same Munitions Act. The employers, they tell us, are using this precious Act to prevent workers leaving their jobs, that workers are being fined for losing time, that women and unskilled workers are being used to cheapen production ... ."

It was particularly the last-named which appeared to many to pose a threat to the long-term future of the craftsmen. Thus mixing polemic with genuine fear for the future, Watson later charged the NAC with,

"... blindly assisting the employers and Government to use the international crisis as an excuse for breaking the power of organized labour."<sup>66</sup>

Another critic, Fred Jowett, the ILP member of Parliament for Bradford, voiced his objections in the unlikely columns of Land and Water<sup>67</sup>. He particularly resented the power of employers to prevent workers moving elsewhere whilst simultaneously depriving them of a full quota of work. If men wished to change jobs in order to obtain the

<sup>64</sup>Ibid., December 1915, p 94. Cf. the general observations of another correspondent in ibid., October 1915, pp 76-7.

<sup>65</sup>That is, presumably in the November issue.

<sup>66</sup>Trade Unionist, April 1916, p 3.

<sup>67</sup>Land and Water, October 2, 1915, pp 18-19.



trade union rate, they were, he claimed, prosecuted. He drew attention to the Cammell Laird case and to the uproar which had been caused by the prosecution. The toleration of low pay and of long hours by tribunals refusing leaving certificates meant that, under the Act, men were as firmly fixed to the service of one employer as if they had been branded as serfs (a sentiment often encountered among critics of the Act)<sup>68</sup>. Finally, those rules and customs guaranteeing relatively high rates for certain operations were being steadily and quietly set aside, with no changes of working practices being recorded and no government action to remedy the defect<sup>69</sup>.

Jowett's local trades council in Bradford called for the repeal of the Munitions Act as a "gross interference with the rights of the workers"<sup>70</sup>. Particular exception was taken to the power of the employer to discharge at will, while the workmen had the right to leave taken away from them. The proposer of the motion at the trades council drew attention to the case of a labourer who had left his employment at the Lancashire and Yorkshire Railway, in order to take up a post in a dye-house at 5/- a week more. Since he did not have a leaving

<sup>68</sup> Cf., Kirkwood's famous speech to Lloyd George. Cf., also, the report of William Brodie, the ASE Scottish district delegate: "We are still having trouble through the application of the Munitions Act, many of our members being almost in revolt at being bound over to one employer". See ASE, Monthly Journal and Report, October 1915, p 27. This was one of the very few critical remarks on the tribunal uttered by Brodie. His appointment as tribunal assessor was only part of the reason. The danger of inflaming unconstitutional rank and file direct action was surely another.

<sup>69</sup> For a general response to Jowett's charges, see Lord Sydenham's reply in Land and Water, October 9, 1915.

<sup>70</sup> Yorkshire Factory Times, October 28, 1915. According to Clinton, op.cit., p 75, the Munitions Act was constantly being discussed by trades councils, and protests increasingly grew strident as the war wore on.

certificate, the railway company were entitled to demand his discharge from his new employer. This was done, but the labourer was not re-employed by the railway company and as a result, was still unemployed after three weeks.

"It was a scandal that men were kept idle in that way whilst machinery all over the country was standing for want of labour,"

complained the proposer of the motion<sup>71</sup>.

The descriptive imagery employed to depict the effects of the Act testifies to the intensity of hostility which it was engendering. Thus it was said that the Act furthered the objectives of private employers in their endeavour to "make human beings into a machine"<sup>72</sup>, that it was intended to "reduce their workmen to slaves"<sup>73</sup>, and that the aim was to "secure a labour force as docile and responsive as if it was made up of horses"<sup>74</sup>. What was implied was that the Act was a mere pretext, and that,

"... the governing class is using the opportunity of the War to alter the institutions of the country so that any kind of resistance against industrial oppression can be put down,"<sup>75</sup>

Indeed, that the government might be suspected by the unions as acting as the "mouthpiece" of the employer was even admitted by the leading ministry official, Llewellyn Smith, despite his own resolve to act according to the dictates of the "national interest"<sup>76</sup>.

<sup>71</sup>Yorkshire Factory Times, October 28, 1915.

<sup>72</sup>ASE, Monthly Journal and Report, January 1917, p 27. The date of this comment lends support to Clinton's remark (supra).

<sup>73</sup>Ibid., November 1915, p 57.

<sup>74</sup>New Statesman, December 4, 1915, p 197.

<sup>75</sup>Cited in Davidson (1974), op.cit., p 3.

<sup>76</sup>Ibid., pp 8, 13-14.



Certainly, there was no let-up in the barrage of criticisms which flew thick and fast from the pages of the labour press. The grape-shot quality of the attacks on the measure is illustrated time and again in long articles and critical editorials. For example, a Clarion journalist, R.B. Suthers, who had, in 1909, published the pragmatically entitled, Common Objections to Socialism Answered, sought to illuminate the "maladroit" working of the Act by questioning why the minister persisted in appointing as tribunal chairmen those who were not trusted by munitions workers<sup>77</sup>. If there was slacking in the workshops, then the only solution was to place the shops under the control of the men and let them deal with the slackers themselves. It was because employers "indulge in 'petty tyrannies' under cover of DORA", and because the men suspected the motives of the employers in instituting "unnecessary" disciplinary measures, that the men resorted to slacking.

In a long editorial six weeks later the same newspaper, under the headline, "The Munitions Bumbles", wrote that,

"Petty tyrannies and wrongs have accumulated so extensively under the Munitions Act that the promised Amending Bill had [sic] become quite as essential to the national welfare as the original Act." <sup>78</sup>

It went on to point out the many grievances under the Act, the chief being, of course, the arbitrary power given to employers under the leaving certificate scheme to refuse to permit a munitions worker to leave, while at the same time permitting the employer the right to dismiss or to refuse to employ him. Particularly resented was the employer's

<sup>77</sup> Clarion, October 8, 1915.

<sup>78</sup> Ibid., November 26, 1915.

power to keep men idle without pay for long stretches, while refusing to grant them leaving certificates; and then, as in one case, prosecuting a worker who decided after four days without work or wages to register his protest at his treatment, by refusing work when it again became available. These "arbitrary stupidities" were, it was thought, being checked by ministry circulars to controlled establishments. But of course the damage had already been done in many establishments and a ministry circular had no binding authority (and therefore an amendment to the Act was still necessary). Finally, the greatest offenders, the ship-repairing firms, were in fact exempted in the 1916 Act from the provision dealing with this particular abuse, even though a ministry enquiry had clearly established that special protection for such firms, in respect to the related requirement for a week's notice to terminate employment contracts, was unnecessary<sup>79</sup>. The Clarion also drew attention to the exploitation of female labour under the Act (which many male trade unionists no doubt saw simply as a threat to their livelihood). Thus it referred to the concern which Mary Macarthur had expressed at the employment of women at 2½d per hour making bombs seven days a week, 72 hours per week and with only one day off a month.

"And" said the editorial, "the Ministry of Munitions representative had the brazen impudence to call on this factory and lecture the starved and tired drudges on the patriotic need for greater effort!"<sup>80</sup>

At least, it thought, the ministry's circular L2 would put an end to the practice, as in one establishment, where women employed on making fuses and field telephones at a rate of 2d per hour, had replaced men on 10d

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<sup>79</sup>MUN 5/79/341.1/3, "Report of Enquiry re 7 days Notice of Discharge to Shipyard Workmen under s.5(3) of Munitions of War (Amendment) Act 1916 .... September 11, 1916".

<sup>80</sup>Clarion, November 26, 1915.



per hour. Again, perhaps greater faith was reposed in administrative action than was merited. The unions, certainly, demanded nothing less than legislation.

The final sally was directed against the "impartial" tribunal chairman and assessors. The former was,

"... very often of the persuasion that workmen were specially designed by providence to do what they are told and make no fuss about it. As for the assessors on the Tribunal, they mostly seem to play the part of the Gilbertian "flowers that bloom in the spring.""<sup>81</sup>

Tribunal decisions were attacked as capricious and contradictory, grossly unjust and in some cases "directly opposed to the letter of the Act". For example, it cited the "notorious case of the man who was fined because he had overslept and arrived late after 62 hours work during the week"<sup>82</sup>. It concluded that, "Such brutalities are not conducive to strenuous and arduous efficiency".

Thus the pattern of focusing public attention, through the press, on the existence of abuses or on "intolerable evils", was taking shape. The extent to which tribunals had adopted a consistent policy of underpinning employers' oppressive actions, however, was difficult to ascertain. But since reports of unjust hearings were echoed throughout the country, that in itself was taken as evidence for change. Thus the possibility that such cases were atypical or the suggestion that it was simply not possible to have a Munitions Act without some munitions workers suffering from its provisions was not addressed. But as a general observation, it may be argued that the empirical validity of the case underpinning a reform

<sup>81</sup>Ibid.

<sup>82</sup>Ibid. See also G.D.H. Cole's remarks on the case in the Nation, November 20, 1915, p 289.

campaign is not a sufficient, perhaps not even a necessary, element in that campaign. For the empirical base may be highly selective or unrepresentative, whereas a widespread perception of its validity is probably essential. Though the evidence is contradictory, there are some indications that tribunal experience of the leaving certificate scheme in Glasgow and indeed elsewhere did not consistently correspond to the pattern of tribunal proceedings which the more colourful accounts in the Labour press appeared to suggest was occurring.

Nonetheless, amid the welter of invective in the columns of such newspapers, few were prepared to go so far as to repudiate the very principle of the Act as, for example, Arthur MacManus, writing in the Socialist<sup>83</sup>, had done. In the case of the Clarion, for example, the rationale for the measure was accepted, and only when its enforcement was thought to be blatantly unconscionable was the resounding demand for reform given expression. Thus while the critique of the Act was carefully circumscribed, its necessity, albeit in amended form, was never doubted<sup>84</sup>.

The approach of the New Statesman, in a major article, "The Failure of the Munitions Act",<sup>85</sup> was also carefully phrased. While not welcoming the Act in the manner adopted by the Clarion, it nonetheless made its observations on the footing that the wholesale repeal of the measure, which it would have favoured, was not politically practicable. The Act, it insisted, was, after four months, a blunder and a failure. While

<sup>83</sup>Socialist, January 1916, p 32. This was, of course, the view of the CWC.

<sup>84</sup>Clarion, November 26, 1915.

<sup>85</sup>New Statesman, November 13, 1915, pp 124-5.



munitions output had undoubtedly increased during this period, that was accounted for by Lloyd George's "extraordinarily lavish outlay of capital" and by the enlargement of, and increase in, the number of munitions factories. None of these developments depended, in fact, on the Munitions Act itself. Yet the working of the Act had produced a state of mind on the part of munitions workers which had resulted in a widespread sullen resentment against a measure which they considered was being harshly administered exclusively in the interests of employers.

"Now", it continued, "we put it to Mr. Lloyd George very seriously that this kind of thing will not do. The Munitions Act was, in our judgment, bad from its inception. If we want the British workmen to increase their output we must not try to do it by coercion. If we wish to get additional workers into munitions factories, it is the very worst way to subject these factories to exceptional penal conditions from which other employments are free. But having got the Act, it is vital to see that it is administered, not only fairly and impartially, but also in such a way as to seem fair and impartial. To let employers and foreman use the Act to compel the workers - especially the women - to accept whatever rates of pay the employer chooses (the workers are reminded that it is an offence for them to refuse the job, and that they are not allowed to leave); to coerce men and women, doing sixty to seventy hours a week, to work overtime, and fine them if they refuse; to retain by force men or women who quite legitimately wish, on the expiry of their contracts of service, to change their situations on all sorts of personal grounds; to give the employer power to make, and to enforce by fines and "suspensions" any rules he pleases, without asking the workmen's consent - all this is steadily to augment the resentment of the wage-earning class. If it is continued, it will do more to make them "tired of the war" than any amount of "pacifist" propaganda. It is not by a Munitions Act that M. Albert Thomas has got such splendid results from the French workmen. We shall never extract a maximum output out of sullen and angry workers who feel themselves enslaved, and, as we must add, who believe themselves to have been tricked and defrauded."<sup>86</sup>

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<sup>86</sup>Ibid., p 125.

The sober but critical assessment by the New Statesman, which also reflected the attitude of the Herald, and of W.C. Anderson in his series of articles on the Act for the Forward<sup>87</sup>, was therefore grounded in a pragmatic evaluation of the impact of labour laws to secure consent. The ideological objection to war, which might fill the columns of other left-wing publications such as the Labour Leader, played little or no part in the New Statesman's criticism of the Munitions Act. Indeed, the strength of the campaign for reform was rooted in the "constructive" criticism offered of its effectiveness to date. Even The Times<sup>88</sup> was disposed to recognize that a measure which was "bound by its very nature to cause some friction" could authorise a "grievous act of oppression and an intolerable curtailment of personal liberty". Notwithstanding, it feared that any concessions on the measure would only further encourage what it called "certain persons in this country, calling themselves members of the ILP, who have from the first done their utmost to discredit the national cause and help the enemy to win".

"To play into their hands", it concluded, "by giving the men any ground for believing that they are being tricked and ill-used would be the height of folly."<sup>89</sup>

It was certainly true that the ILP, like the CWC and the TURC, set its face firmly against the Act. At the ILP Annual Conference in early 1916<sup>90</sup> the Minister of "Compulsion" was spoken of as employing the tactics

<sup>87</sup>Forward, September 18, 25, October 2, 9, 1915.

<sup>88</sup>The Times, November 1, 1915.

<sup>89</sup>Ibid.

<sup>90</sup>ILP, Annual Conference Report 1916, p 45.



of the "iron-heeled capitalists who flourish on the Rand in South Africa". Deportations without trial, restrictions on mobility to contain the price of labour, the activities of speculators free to force up commodity prices, and the "shameless" exploitation of labour, were all recounted.

Dealing with the sensitive matter of comparing munitions workers with those in the trenches (a contrast which Lloyd George never hesitated to point out)<sup>91</sup>, the Chairman of the ILP, warned that,

"One feels conscious, perhaps, that as compared with the awful experience of the war itself by the men who are in it, such considerations may seem small and unworthy of attention, but this is not so in point of fact, for the war will end some day and then men will return to find, if we are not careful, that during the war, the balance of power has been weighted still more heavily than it was before the war ..."

The conference thereupon approved a resolution calling for the,

"... unconditional repeal of the Munitions Act, recognising that no amendment of the same can be effective while the principle of the Act remains the same and the control of munitions is vested in the hands of private ownership upon a basis of profit."<sup>92</sup>

The uncompromising terms of this resolution, which resisted an amending proposal supported by Margaret Bondfield<sup>93</sup> calling for the "most drastic amendments" to the Act, contrasted sharply with the Labour Party's approval of a resolution<sup>94</sup> at its January 1916 annual

<sup>91</sup>For an instance, see the Glasgow Herald, January 5, 1916.

<sup>92</sup>ILP, op.cit., p 81.

<sup>93</sup>Ibid., p 82.

<sup>94</sup>Labour Party, Report of Fifteenth Annual Conference, Bristol, 1916, p 128. While the Party was active in parliamentary discussions on the Munitions legislation, the Executive Committee of the Party was rather more subdued and scarcely gave any consideration to it at its regular meetings, as the Executive Minutes indicate. Cf., R.M. Martin, TUC: The Growth of a Pressure Group, 1868-1976 (Oxford: Clarendon Press, 1980), p 132. Martin argues for a leading role for the Party in forcing a relation of "close dealing and hard bargaining" between the government and the unions. Even if the assessment related exclusively to the PLP, the ASE, surely, possessed greater influence.

conference couched in near-identical terms to that which the ILP threw out. The not unexpected divergence, consequently, more clearly illuminated the point that few labour leaders and trade unionists joined the rejectionist front over an Act whose damaging affects were by now notorious. No doubt that fact itself made it easier for Lloyd George to negotiate "suitable" terms for an amending bill.

But the success of the campaign, albeit qualified, to persuade Lloyd George to re-think the Munitions Act owed much to the manner in which the beneficiary of reform was now claimed to be the nation itself and not merely the interests of Labour. As Cole had written in the Nation<sup>95</sup>,

"Those who desire to save the situation must not merely censure Mr. Lloyd George for refusing rights and responsibilities to the unions: they must also show how the rights and responsibilities they claim for Labor could be exercised in the national interest."

Thus, how munitions output could be increased (whether in reality or in the mind) now came to preoccupy the participants in the Great Debate. The struggle to appropriate that legitimizing value of the "national interest", that magically hypnotic appeal which reduced even Fairfield strikers and Cammell Laird craftsmen to protestations of loyalty, now informed the contours of the argument. Thus one contributor to the Clarion wondered whether the policy of the Ministry of Munitions to increase output was not in fact resulting in considerably decreased production. For<sup>96</sup>,

"Some of the things which the Munitions Department have done tend to decrease rather than increase the output of the workers. Do such things as the

<sup>95</sup>Nation, October 16, 1915.

<sup>96</sup>Clarion, September 17, 1915.



following help towards harmonious working: the establishment of munitions tribunals presided over by men whom trade unionists distrust? Is it a good thing to send a list of offences and their penalties to be posted up at Government-controlled firms? Another arrangement, the appointment of men<sup>97</sup> to enter firms at all hours and prosecute so-called slackers without any appeal to the foreman? ... Calling the workers slackers and punishing them will not explain why thousands of shells are delayed from the first, because of the rolling mills being unable to supply bar steel fast enough; thousands of shells waiting for nose bushes before they can be completed; shells waiting the results of the firing tests from the Government departments; work held up by the grocers, tailors, shop assistants, labourers who are appointed by a Government department to examine shells that have previously been examined by skilled mechanics<sup>98</sup>... For the benefit of organisation, the solicitor must retire for the engineer!"

What, of course, was being questioned here was the ability of the Act to meet the government's production objectives. The more the men were subjected to pressure, it was argued, the less likely it was that those output objectives would be attained. In any case, obstacles more serious than the obstinacy or malevolence of the workers were identified. Thus steps to remove bottlenecks which in other spheres would be readily recognized as structural defects in the supply and production sectors<sup>99</sup> demanded urgent attention, though the "petty tyrannies and wrongs"<sup>100</sup>

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<sup>97</sup>These were presumably the ministry's labour officers.

<sup>98</sup>There was widespread criticism of the competence of inspectors. Cf., a Commons amendment proposed by W.T. Wilson of the Amalgamated Society of Carpenters and Joiners that inspectors be "properly and technically qualified". This was resisted by Addison despite the allegation that pawnbrokers' assistants, labourers and butchers had been appointed to these posts. They were the "laughing stock" of the men and of the foremen. One instance was cited by Watson where an inspector had rejected 78 out of 84 shells while another had passed 74 of them. See Amalgamated Society of Carpenters and Joiners [ASCJ], Journal, January 1916, p 45.

<sup>99</sup>Cf., E.M.H. Lloyd, op.cit., Ch.V.

<sup>100</sup>Clarion, November 26, 1915.

committed in the name of the 1915 Act also made it incumbent in the national interest that amendment be undertaken.

What is interesting, therefore, is that the campaign for reform (or for repeal) was initially undirected and haphazard. Identified with "extremists" and with militants, criticism of the Act gradually altered shape under the pressure of events taking place in the workshops and in the tribunals. Accusations that the Munitions Act was an employers' charter and an attack on trade union rights and freedoms could safely be discounted by the authorities as the activities of a fringe minority. Even to gloat that<sup>101</sup>

"The military might round up the miners and conduct them to the pitheads, but they could not make them descend, still less cut coal against their will,"

or that<sup>102</sup>,

"It is doubtful whether the net effect of the Act itself has been to increase our resources by a single shell,"

could be made to sound like debating points. However, to invoke the national interest as a justification for amendment and to remind the authorities that the Act was itself generating more unrest than it was designed to suppress was to touch sensitive chords within the Ministry of Munitions. Moreover, the revelations (or innuendoes) concerning employers' blatant abuses of the Act, which the tribunals seemed to be ratifying in their decisions, also drove the union leadership to recant their earlier extravagant praise for the measure. Whilst opposition within the trade union movement to the Act remained limited to the supposed special pleading of an obdurate and unpatriotic minority,

<sup>101</sup> New Statesman, July 17, 1915, p 339.

<sup>102</sup> Ibid., November 13, 1915, p 124. Cf., E.G. Rawlinson (Sheffield) at Labour Party Conference, 1916, op. cit., p 129.



it presented no fundamental threat to government policy. Once, however, the trade union leadership had imbibed the lesson of rank and file discontent with the latter's direct experience of the Munitions Act in the workshops and before the tribunals, the leadership had little choice but to respond to the barrage of complaints. The option of dismissing the critics, as Alex Wilkie of the Shipwrights had done, as individuals "not altogether without ulterior motives"<sup>103</sup>, was no longer readily available once denunciations were expressed in the name of the national interest<sup>104</sup>.

The clinching factor in propelling the case for reform onto a "respectable" platform was of course the report of the Balfour-Macassey Commission set up by Lloyd George to "enquire into the causes and circumstances of the apprehended differences affecting munition workers in the Clyde district"<sup>105</sup>. Its sober criticism of the methods of enforcing the leaving certificate scheme on Clydeside (discussed in chapter nine<sup>106</sup>); its acknowledgement that the Act was creating added

<sup>103</sup> SSA, Quarterly Report, July-September 1915, p 5.

<sup>104</sup> Of course there was yet a further path to pursue, that followed by the Govan Trades Council in its circular issued in the wake of the Fairfield shipwrights' crisis. Its demand was for the repeal of the Act both on account of its oppressive character and also, significantly, because it "in no wise is assisting in increasing output". This combination of patriotic pragmatism with repeal was akin to a return to the voluntarist and discredited Treasury Agreement and was no longer viable as an option.

<sup>105</sup> Clyde Munition Workers, Report of the Rt. Hon. Lord Balfour of Burleigh and Mr. Lynden Macassey, K.C., Cd. 8136, 1915.

<sup>106</sup> The most comprehensive analysis of the report's investigation into the leaving certificate scheme is in Alastair Reid, "The Division of Labour in the British Shipbuilding Industry, 1880-1920", Cambridge Ph.D., 1980, esp. pp 342-9.

tension between foremen and workers, as the authority of the former was now underpinned by penal sanctions; the disruption to existing payment systems; the jealousy caused by the arrival of more favourably treated newcomers from Canada and elsewhere; the disastrous consequences of imprisonment following the Fairfield episode as well as a number of other matters too detailed to mention, not only confirmed the legitimacy of the amendment campaign. Its report, in effect, also thrust the Commission into the role of moral entrepreneurial state agency (analogous to the Federal Narcotics state agency in Becker's account, supra) which slotted neatly into the groove previously occupied by such less respectable and publicly disapproved "wrecking movements" as the Trade Union Rights Committee and the critical labour press.

Yet perhaps even more interesting, once a number of employers, or those sympathetic to their interest, questioned the value of the Act as then framed, the credibility and effectiveness of the reform campaign could scarcely be resisted. Thus even the Engineer<sup>107</sup> accepted that the men's grievances concerning the discipline imposed upon them by the Act was "not conducive to the best workmanship" and that some foremen and employers had taken advantage of the Act by summoning their employees to the tribunals for trivial offences where "these bodies, not always cognisant with the facts" had issued harsh decisions. The recognition by non-labour publications that defects existed in fact symbolised the shift in the demand for change, from an uncoordinated and erratic protest mounted on narrow, sectarian lines and reflecting political prejudice as much as special pleading, to a broad, institutionalised movement

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<sup>107</sup>Engineer, December 17, 1915.



invoked in the national interest. The transformation could not initially have been predicted with any certainty, if only because the law itself was unpredictable. No-one could have guessed beforehand the occasion or occasions which provided the catalyst to change - whether Fairfield, Cammell Laird, Armstrong Whitworth on the Tyne, Thorneycroft, or Doxford of Sunderland. Nor could the tolerance level of the thousands of pin-pricks, in the shape of harsh refusals of leaving certificates, or of irritating and gratuitous prosecutions for petty offences, be accurately fixed. But while the trade union leadership might disavow bodies such as the CWC which was formed "for the purpose of concentrating the whole forces of the Clyde area against the Munitions Act"<sup>108</sup>, it could scarcely ignore the discontent of their otherwise patriotic members for ever. The sharing of experiences at joint conferences on the workings of the tribunals and on amendments to the Act would merely have confirmed their conversion to the new, unfolding reality.

### Conclusion

The present chapter has sought to avoid discussing in detail the familiar watershed events such as the imprisonment of the Fairfield shipwrights, the hearings of the Balfour-Macassey Commission in Glasgow and the "bargained corporatism" embodied in the major trade union conferences with Lloyd George held on November 30 and December 30-31, 1915. Other chapters will, in fact, consider specific features surrounding these important events. Thus we consciously avoided becoming bogged down in the small print of the reform package negotiated between the union executives and the government at inordinate (and, indeed, at

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<sup>108</sup>Walter Kendall, The Revolutionary Movement in Britain 1900-1921 (London: Weidenfeld Nicolson, 1969) p 116. The activities of John MacLean in attempting to politicize the industrial grievances of the Munitions Act were undoubtedly anathema to the union leadership even if such efforts were ineffective. The literature on MacLean is too well known to require repetition here.

tedious) length over many weeks in the winter of 1915-16. Instead, we have chosen to focus attention on certain processes of legal change. In particular, an attempt has been made to integrate competing theories of legal innovation into a comprehensive account, demonstrating how elements of each of those cited contributed to the growth of the reform campaign and to the eventual emergence of an amending provision.

Nonetheless, a number of observations concerning the legislative package finally arrived at in the 1916 Amendment Act must be made. Most importantly, the evidence as to whose views ultimately prevailed - whether government's, employers' or unions' - is open to rival interpretations. One can, for example, point to statutory changes which seem to indicate without qualification, concessions gained by trade union pressure. Thus the abolition of imprisonment (despite the initial objections of Lloyd George), the establishment of an appeal tribunal, significant changes in the provisions regulating the administration of the leaving certificate scheme, and the appointment of women assessors, might all be adjudged as "successes" for the Labour interest. Indeed, as well as the instrumental dimension to such "gains", the symbolic importance of the concessions both to the rank-and-file and to the trade union leadership (though not necessarily for identical reasons) should also be stressed.

On the other hand, a certain amount of ambiguity attached to such gains. For example, Defence Regulation 42 was amended on November 30 - ironically the day of the trade union conference - in order to prohibit attempts to "impede, delay or restrict the production, repair or transport of war material ....". Such an amendment, despite the minister's protestations, rendered those engaged in strikes liable to trial in open



court or even to court-martial conducted in camera, with imprisonment awaiting those found guilty<sup>109</sup>. Second, the appointment of an appeal court was in keeping with government policy and was thus hardly a "concession" to Labour. Wolff, for example, in a review of the working of the tribunals, pointed out in February 1916 that if the right of appeal had existed prior to that date, the ministry would have exercised it to correct some of the less acceptable decisions, "principally in Glasgow", which from the ministry's point of view, had been delivered<sup>110</sup>. Third, the contraction of employers' scope to abuse the leaving certificate scheme as a result of the issuance of statutory guidelines (see chapter nine, infra) was accompanied by the expansion of the scheme to include more trades within its scope. Thus the building trades, gas, water and electricity utilities, and the manufacture of "everything from food and coal up to cutlery and feathers" which might be "used or consumed by the troops"<sup>111</sup> were brought into the scheme, thereby causing resentment among those newly affected<sup>112</sup>. Finally, the introduction of women assessors scarcely matched the demand for a wholesale transformation of the composition of the tribunals,

<sup>109</sup>OHMM, Vol. IV, Part II, pp 81-2. The ASE conference committee on December 31 accepted Lloyd George's "assurance" that "the only effect of this Order was with regard to men who deliberately foster strikes". See ASE, Amending the Munitions of War Act 1915 (1916) p 20. The wording, however, seemed to extend to the case of those on strike, as well as to the inciters. It is, moreover, arguable that the death penalty awaited any striker if it were proved that his intention was to "assist the enemy".

<sup>110</sup>MUN 5/98/349/101, "Munitions Tribunals: Umberto Wolff, February 24, 1916". Wolff welcomed the fact that the new appeal court would be "efficacious" in resolving conflicting decisions.

<sup>111</sup>New Statesman, November 20, 1915, p 147.

<sup>112</sup>See, for example, the anger expressed by the executive of the Amalgamated Society of Carpenters and Joiners, in ASCJ, Journal, January 1916, p 15; S. Higenbottam, Our Society's History (Manchester: Amalgamated Society of Woodworkers, 1939) p 192.

entailing the direct election of workmen's assessors and equal voting power with the chairman<sup>113</sup>. Indeed, not one proposal for locally elected joint committees to which all matters falling within the jurisdiction of the munitions tribunals were to be referred for settlement in the first instance, was included in the statute. Thus even if the ASE and the national conference of 55 trade unions might be converted to Guild Socialist-inclined principles of joint control and joint responsibility for the organization of industry (a scheme far removed from the CWC demand for nationalization and worker participation), the idea was anathema to the employers' federations<sup>114</sup> and unacceptable to the authoritarian and bureaucratic minds of the civil servants. Thus when Lloyd George himself expressed an interest in a joint committee which might review tribunal decisions with a view to sending appropriate ones to the appeal court, Beveridge sought to contain the potential damage to centralized policy-making by insisting that<sup>115</sup>,

"... this Committee should be quite private, as a public pronouncement of the appointment of a committee to sit as it were in judgment on the decisions of the munitions tribunal would certainly impair the credit of the latter ..."

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<sup>113</sup> Nation, December 24, 1915, p 477. On one occasion after the amendment was passed, W.C. Anderson told the Commons that a tribunal hearing at Carlisle, involving a female munitions worker, was conducted without a woman assessor being present. On this occasion, Anderson almost slipped up. The appointed assessor, he was told, had died two days prior to the hearing and there was no time to appoint a replacement (a postponement of the hearing could, however, have been made). See H.C. Deb, 5th Series, Vol. 87, col. 1236, November 21, 1916.

<sup>114</sup> OHMM, op.cit., pp 70-1; see also Bev. III, 9, f. 51, "Questions and Answers for Meeting of the ASE Concerning the Munitions of War (Amendment) Act 1916" (undated).

<sup>115</sup> MUN 5/98/349/101, op.cit.



In the event, even this limited suggestion failed to come to fruition and decentralized joint administration remained the exception, as at Cleveland Iron Works (chapter eight, infra), rather than the rule.

On balance, therefore, and with the possible exception of the statutory enforcement of L2 and L3<sup>116</sup>, the amendments contained in the 1916 Act benefited the government no less than the unions. Thus the government were now in a position of being able to parade the changes, which the union leaders undoubtedly perceived as gains (if only for domestic consumption) as a quid pro quo, obliging the leadership, in exchange, to pledge themselves to support the dilution campaign.

The truth of the matter is that once more Lloyd George had pulled the wool over the union leadership's eyes, making them believe that major concessions had indeed been gained. For as G.D.H. Cole pointed out in respect to one of the trade union demands<sup>117</sup>,

"By an obvious error in drafting, the original Act made it possible for an employer to dismiss a man and at the same time, by refusing a leaving certificate, prevent him from getting employment elsewhere. It is a great concession to Labor, indeed, that the Ministry of Munitions should deign to rectify its own drafting mistake."

Indeed, not unexpectedly, criticism of the Act did not cease following the amendments. Thus further reforms were initiated in the wake of the reports of the Commission on Industrial Unrest, culminating, in the 1917 Act, in the abolition of leaving certificates and

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<sup>116</sup>In the case of L2, one suspects that its statutory embodiment was more honoured in the breach than in the observance, while the statutory enforcement of L3 wrought the injustice which the 12½% bonus dispute later vividly illuminated.

<sup>117</sup>Nation, December 24, 1915, p 477.

in the curtailment of private prosecutions, the details of which need not be recounted here<sup>118</sup>. By then, the Munitions Act had enjoyed an innings of sufficient duration that the interment of its most obstructive features would prove no embarrassment to the government. Loss of face, that vitally important dimension in 1915, was scarcely a factor by mid-1917, and the Industrial Unrest commissioners' recommendations simply mirrored previously determined government policy. The remaining harmful provisions were thus repealed with a whimper in autumn 1917 rather than with a bang, as in the winter of 1915-16.

The hostility generated by trade unionists against the Munitions Act can, of course, be explained in terms of its penal restrictions which seriously circumscribed the industrial freedoms to which they had been accustomed prior to July 1915. But those features, the fines for striking or for disobeying a lawful order, or the refusal of a leaving certificate are, in one respect, merely a surface phenomenon of a wider contradiction inherent in a corporatist labour strategy. This is that no matter how deeply incorporated into the state machinery do trade unions become (whether by choice or by compulsion); indeed, no matter the degree to which politically trade unionists assent to such close collaboration with the state, trade unions remain, first and last, a movement for the expression of working class discontent, though invariably of a non-revolutionary character. Thus irrespective of their

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<sup>118</sup>On the extremely sketchy comments of the Commission on Industrial Unrest in respect to the Munitions Acts, see W.C. Heron, "The Commission of Enquiry into Industrial Unrest of 1917", Warwick M.A. thesis, 1976, pp 106-10. For the observations of the Scottish commission chaired by Sheriff Fyfe, see P.P. 1917-18, XV, 133, paras. 10, 13-15 and 22.



organizational linkages with the unified state, their centralized leadership owe their positions to the continued approval of the mass of the membership. Where the latter are dissatisfied with falling real wages, restrictions on freedom of movement or with punitive discipline imposed by foremen under statutory authority, then the leadership might find itself compelled to respond to the pressures from below. As democratic organizations, trade union executives can scarcely invoke the coercive measures of the state. Indeed, they may acknowledge that leaderships cannot remain loyal for any length of time both to their membership and to the "national interest" as officially defined. Thus a corporatist structure built on non-corporatist foundations will be susceptible to system contradiction where tensions develop, strains manifest themselves and ruptures occur. The leadership, perhaps opportunistically, perhaps democratically, may be forced to back-track from their lofty, corporatist ideals and display greater responsiveness to rank and file pressures. The consequence is a shift from denigration to accommodation of their militant shop floor critics, indeed the hijacking and deployment of many of the arguments against class collaboration which they had hitherto disdained. The state is thus pressed to give expression to the combination of official and unofficial discontent. Eventually, bargained, rather than statist corporatism emerges. That is what occurred in the winter of 1915-16.

CHAPTER THREE

The Glasgow Munitions Tribunal and its Personnel

Introduction

The munitions tribunal in Glasgow, though not the first to conduct hearings under the Munitions Act,<sup>1</sup> was destined to become both the busiest<sup>2</sup> and the most controversial among the 55 local, and ten general, tribunals. Given that Clydeside was the premier munitions centre in the country, it would have been surprising had this fact not been reflected in the tribunal case load. Thus the statistics reveal (table 3.1, infra), that in the three-month period, January to March 1916, the Glasgow local tribunal heard more cases than any other tribunal.

Table 3.1 Local Munitions Tribunals: Total Number of Cases,  
January 1, 1916 to March 31, 1916 (tribunals with 50 or  
more hearings)

Tribunal	Number	Tribunal	Number
Glasgow	1279	Belfast	138
Metropolitan	825	Huddersfield & Halifax	110
Birmingham	698	Blackburn	105
Manchester	477	North Staffs	86
Newcastle	432	Liverpool	83
Coventry	335	Southampton	83
Leeds	253	Derby	76
Tees & Darlington	234	Nottingham	75
Wolverhampton	216	Edinburgh	70
Greenock	139	Sheffield	64
		Dundee	50

Source: MUN 5/97/349/8

<sup>1</sup>That 'honour' was bestowed on the North-West Coast general tribunal sitting in Barrow on July 21, 1915. See MUN 5/353/349/1, op.cit.

<sup>2</sup>Incomplete figures for individual tribunals are available in LAB2/65/G129/2 (general munitions tribunals) and in LAB2/66/G129/3 (local munitions



At the level of controversy, it might initially have been thought that the intensity of labour unrest on the Clyde would have spilled over into the tribunal hearings. Up to a point, this did in fact occur. William Gallacher, for example, has recalled that,

"Munition Courts were set up and workers were continually being brought before them. Our small [Clyde Workers'] committee was meeting twice a week and every Saturday afternoon we had a meeting of between 300 and 400 stewards. We were always able to get sufficient lads to pack the court when any worker was called before it. McGill was always there with the Herald and a selection of pamphlets, and used to go along the rows of seats selling his wares until the Sheriff came in. We were able to make such a farce of these courts that eventually the authorities had to abandon them and drop the practice of summoning on trivial charges".<sup>3</sup>

There is some evidence, as Hinton has pointed out,<sup>4</sup> that the Munitions Act was operating unevenly on Clydeside. Thus it was mainly the shipyard workers, rather than the engineers in the arms factories on the Clyde, whose grievances were spotlighted at the hearings of the Balfour-Macassey enquiry. Nonetheless, while shipyard employees were often threatened by changes in working practices, other classes of munitions workers never remained wholly immune to attempts by management, under section 4(3) of the Act, to force through the lifting of any "rule, practice or custom... which tends to restrict production". In addition, wage grievances were rife; added to which, the leaving certificate scheme covered all workers within a broadly defined munitions sector including the shipyards, armaments factories, foundries, steel works and certain transport undertakings. Moreover, the instigation, by foremen and managers, of a tighter

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<sup>3</sup>William Gallacher, Last Memoirs, (London: Lawrence & Wishart, 1966), pp 71-2. Cf., ibid, Revolt on the Clyde (London: Lawrence & Wishart, 1936), p. 58. Gallacher's account is, typically, exaggerated, but the atmosphere of disorder in the tribunals was not uncommon. All subsequent references to Gallacher are to Revolt on the Clyde, unless otherwise indicated.

<sup>4</sup>Hinton, The First Shop Stewards' Movement, op. cit., p. 118.



disciplinary framework, underpinned by the Ordering of Work regulations which could authorise prosecutions before the tribunals, was a continual source of tension. Further destabilising influences might be noted. Firstly, the educative efforts of <sup>Cole and Beatrice Webb, as well as</sup> the revolutionary shop stewards' movement, to cast the Munitions Act as an instrument of the servile state generated political hostility to the measure. Secondly, the relationship between industrial discipline under the Munitions Act and military conscription from 1916 became progressively more apparent and made munitions workers more jumpy, thereby adding further fuel to the criticisms expressed before the Industrial Unrest Commissioners in 1917. Finally, as we shall see in the next chapter, there was an almost irresistible urge on the part of munitions workers and their representatives appearing before the tribunal in important cases, to engage in a style of discourse more appropriate to collective bargaining than to judicial determination. Time and again, trade unionists insisted that the question whether their alleged conduct was a technical breach of the legislation was scarcely relevant. On the other hand, the tribunal chairmen frequently had to strain their energies to insist that it was legally incompetent for the accused to digress from the path of strict legal analysis. The tension between legal 'rights' and industrial 'interests' is sharply displayed in such dialogues and is a powerful legacy of the pre-war system of industrial relations which preferred job regulation to be achieved by autonomous, non-legalistic methods, than by the imposition of legal norms.<sup>5</sup>

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<sup>5</sup> Whether the working class, as a result of its munitions tribunal experience, increasingly comprehended the issues of the war in terms which brought the distinctive role of state sharply into focus, is more problematic. It is probably true that the Munitions Act was identified with Lloyd George, though this was likely to be as much a matter of approval on the part of some munitions workers as it was of disapproval on the part of others. Broadly speaking, the attempt at the tribunal was to reassert pluralist autonomy rather than a socialist alternative. Indeed, trade unionists' qualified success at the tribunal played little part in demands after the war for a more favourable legal environment within which collective bargaining might be conducted. Thus the ideas floated at the National Industrial Conference, 1919-1921, do not seem to have been inspired to any degree, by tribunal experience during the war. See also chapter twelve (*infra*).



For their part, the tribunal chairmen similarly found themselves plunged into conflict with the authorities. As we explained in the first chapter, trade unionists' vigorous responses at the tribunal to the bureaucratic dictation imposed through legal controls, was mirrored in the resistance, on the part of certain tribunal chairmen, in Glasgow, to the role fashioned for them by the administrative elite. No longer autonomous judges above the state seeking to interpret a disembodied, reified law, they were to be transformed into mere local agents of bureaucratic policy, whose remit was the containment of industrial unrest and of wage drift within the narrowly circumscribed provisions of the Act. Yet in respect to the corporatist elements of unity, order, nationalism and success, they failed, in the eyes of the Ministry of Munitions, on at least the second and fourth of these criteria. Lacking a sufficiently strong personality to intimidate rowdy workers, or too conscience-stricken to abandon their conception of the pluralist rule of law and of judicial autonomy, they remained gentlemen when the ministry was clearly seeking players to enforce its will.

Yet there remains an interesting paradox despite the mass of evidence of tribunal disorder which we will examine subsequently. The paradox is that,

"... while members of the ASE in every other district of the country were groaning under the slave clauses of the Act, the Clyde district, as far as engineers were concerned, was practically free".<sup>6</sup>

We have already noted that within Glasgow, the engineers, when compared with shipbuilding workers, were relatively immune from tribunal cases. In addition, it seems there existed a sharp distinction between the experience of engineers in Glasgow and those in other towns. Hinton attributes this fact to the technological backwardness of Clydeside

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<sup>6</sup>David Morton, an ASE militant, cited in Hinton, op.cit., p. 118.

which drove the shop stewards' movement to engage in a dilution struggle which engineers in other areas of the country had no cause to pursue.<sup>7</sup> But what he seems to be implying is that there was an inverse correlation between the level of hostility to the Munitions Act and the suffering of workers under its repressive provisions. In fact, engineering workers in Glasgow did feature, on occasion, in tribunal hearings where the restrictions of the Act were crudely wielded against them. Moreover, the inverse correlation theory, as we shall see in chapter nine, receives only scant support from the experience of the leaving certificate scheme, as it operated in Glasgow. For there was little discernible tendency on the part of the Glasgow tribunal chairmen to operate the scheme sympathetically in the sense that a disposition on the part of the chairmen to grant certificates on numerous occasions was plainly evidenced. It is strongly arguable that where leaving certificate decisions were favourable to applicants in Glasgow, this was particularly noticeable in the case of collective applications by groups of workers. As we shall suggest in chapter five, the parties involved were, in effect, engaged in "collective bargaining by litigation". Thus where leniency appeared to have been displayed by tribunal chairmen (and they were not averse to refusing such collective submissions), the practice is explicable not so much in terms of the level of industrial conflict, but in respect to the strategic importance of Glasgow workers for munitions production. Thus the theory that the greater the social unrest, the more necessary to issue palliatives, has limited applicability in the case of the enforcement of the Munitions Act in Glasgow. For not only would one expect such a relationship between law enforcement

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<sup>7</sup>See especially, ibid., pp. 332-3.



and industrial disorder to be established in respect to leaving certificate applications. One would also expect it to have been reflected in the enforcement of other provisions of the Act. The fact remains, however, that the pattern of prosecutions under the Ordering of Work regulations (chapter eight, infra) fails to point unequivocally to such a conclusion. True, many of the workers prosecuted were eventually admonished on being found guilty, but a much larger proportion were fined, with the inevitable consequence that grievances remained harboured for the future. Thus, soured relations between munitions workers and the Ministry of Munitions and, indeed, between such workers and their employers who directly instituted the prosecutions or who instigated them by reporting complaints of misconduct to the ministry, continued unabated. Law consequently prolonged conflict, rather than resolved it.

The objective we have set ourselves is, therefore, to examine and analyse the proceedings of the munitions tribunal in Glasgow. In particular, it is to focus attention on the tribunal conflict generated during the hearings and to offer explanations, in particular the legacy of peace-time collective laissez-faire, for the pattern of disorder which, though not unique in Glasgow, was more prevalent than elsewhere. The task is also to examine the pattern of decision making by the tribunal chairmen in areas such as leaving certificate applications and Ordering of Work prosecutions, and to examine whether factors, such as the relationship between lawlessness and law enforcement, might influence tribunal outcomes in Glasgow when compared with other industrial districts.

#### The Tribunal Chairmen

The pattern of tribunal proceedings was influenced to an extent by the tribunal chairmen with whom limited discretion principally

resided<sup>8</sup> as to the conduct of the hearings, as to the punishment of offenders and as to the grant or withholding of leaving certificates. Some importance was attached by the Ministry of Munitions, in theory at least, to a more informal atmosphere in the tribunals than that which obtained in the courts of law, especially in the criminal courts. In particular, the recent experience of the unemployment insurance panels set up under the National Insurance Act 1911 was considered a favourable portent, in contrast to the tortuous, legalistic hearings on workmen's compensation in the courts of law.<sup>9</sup> Yet, as the New Statesman never tired of stressing, the Munitions Act was a criminal law measure.<sup>10</sup> Perhaps this confusion of objectives - an "informal" criminal law - was mirrored in the choice of chairmen for the tribunal in Glasgow. For both professional judge and part-time chairmen of unemployment insurance panels were initially appointed to the posts. Strictly speaking, the appointees to the Glasgow local munitions tribunal were Professor W.M. Gloag, Commander Robert Gibson and James Andrew, while those appointed as chairmen of the Scotland division of the general munitions tribunal which sat most frequently in Glasgow were Gloag and Sheriff T.A. Fyfe.

William Murray Gloag (1865-1934)<sup>11</sup> was Professor of Scots Law at Glasgow University, the son of the Court of Session judge, Lord

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<sup>8</sup> Assessors were usually subordinated to the greater authority of the chairman.

<sup>9</sup> Abel-Smith and Stevens clearly bring out the arbitrary divisions in legal analysis in this area, and also the nature of the dissatisfaction with the compensation system. See Brian Abel-Smith and Robert Stevens, Lawyers and the Courts, (London: Heinemann, 1967) pp. 115-6.

<sup>10</sup> New Statesman, November 13, 1915, p. 124.

<sup>11</sup> For the biographical details, see the Baillie, Vol. 86, No. 2236, August 25, 1915, pp 3-4; Who Was Who, 1929-1940; and [Glasgow University] College Courant, Whitsun, 1955, pp 83-6.



Kincairney. An outstanding scholar, he unfortunately did not cut an imposing figure on the munitions tribunal bench, despite the claim that he was possessed of a "resolute, slightly choleric, slightly pugnacious, Churchillian mien".<sup>12</sup> He suffered from a minor physical deformity and an associated defect of speech, though not such as to render him a constant object of ridicule at the tribunal. A man of quiet and retiring disposition, who was never excessively pompous or remote, he was probably not unsuited to the relatively peaceful waters of the unemployment insurance court of referees, where, if occasion demanded, he could exercise his marked intellectual gifts. This, as we shall see, was, of course, the problem. The Glasgow munitions tribunal was no place for a chairman whose only quality was a superb intellect.

Lieutenant-Commander Robert Gibson, R.N.V.R. (1871-1955)<sup>13</sup> was a partner in the leading Glasgow solicitors' firm of Crawford, Herron and Cameron, and had been active in municipal affairs as member of the defunct Partick Town Council, where he was appointed the Dean of Guild, presiding over the court responsible for approving building plans and for enforcing building regulations. A recognized authority on national insurance law, having published a treatise on the subject in 1912, he was, like Gloag, a chairman of the court of referees, and was, therefore, a logical choice as munitions tribunal chairman. No doubt his experience as a magistrate also counted in his favour, as did his sporting background, which included a spell playing for Queen's Park F.C. Yet despite his "wide experience of workmen and their ways; intimate knowledge of

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<sup>12</sup>College Courant, ibid., p. 83.

<sup>13</sup>Baillie, Vol. 87, No. 2266, March 22, 1916, pp 3-4; Scottish Biographies, 1938, (London: Thurston and Glasgow: Jackson, 1938) p. 276. He is not to be confused with Robert Gibson KC (died 1965) who later became Labour MP for Greenock (1936-1941) and subsequently Lord Gibson, a judge of the Court of Session.

local industrial conditions, and the keenest perspicacity on every phase of these matters", (in the words of the Baillie<sup>14</sup> at the very moment when he was under notice from the Ministry of Munitions to quit his post), he did not, as we shall see, satisfy the ministry. "Tactful yet not afraid to speak his mind when occasion demands", he proved too undisciplined and too unreliable for the ministry autocrats. No doubt the fact that he "holds strong views in regard to centralization in municipal affairs", adhering keenly to local autonomy, rendered him ill-suited to the centralizing activities of a war-time corporatist department. So the respect in which he was held by members of the local bar proved of no consequence. To have "realised the popular ideal of a just judge" was no doubt a suitable epitaph to his juridical qualities but was, from the ministry's perspective, a fitting condemnation of his incompetence for the specialized task of handling obstructive and aggressive munitions workers.

The third local tribunal chairman appointed was James Andrew (1855-1932), senior partner in yet another prominent firm of Glasgow solicitors, Messrs. Mitchells, Johnstone & Co.<sup>15</sup> Unlike the case with Gibson, there seems little evidence from Andrew's background that he had had much direct contact with working class experience. Born near Ayr, and educated at Ayr Academy and Glasgow University, he began his legal training in the town clerk's office of his native town. He then spent four years with the long-established Glasgow firm of Maclay, Murray and Spens before joining Mitchells, Johnstone in 1880.

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<sup>14</sup>Baillie, Vol. 87, op. cit., p. 4, for this and subsequent quotations.

<sup>15</sup>Ibid., Vol. 102, No. 2659, September 26, 1923, p. 4; Glasgow Herald, June 23, 1922; ibid., March 7, 1932; ibid., June 3, 1932; Bulletin, March 7, 1932; Glasgow Chamber of Commerce Journal, Vol. 15, April 1932, p. 65; Evening Times, March 7, 1932; Scots Law Times (News), 1932, pp. 54-5.



Within eight years he had become a partner and had built up a large court and commercial practice. For more than 12 years, he was a member of the Glasgow Chamber of Commerce, serving a term as a director; a trustee of Glasgow Savings Bank; director of Glasgow Mental Hospital and governor of the Royal Technical College. Involved in the activities of the Trades House and director of the Merchants' House, he was appointed Dean of the Incorporation of Weavers in 1923. The previous year, he received an honorary LL.D. from Glasgow University in part recognition of his duties as solicitor to the university. He was also Dean of the Faculty of Procurators (the local law society) from 1920 to 1923. Apparently very much of a "lawyer's lawyer", his activities, as we can see, were confined to the business, professional and academic elite of Glasgow. The most senior of the three local tribunal chairmen, he is clearly the least interesting to the labour historian.

When we turn to the final name, that of Sheriff Thomas A. Fyfe (1852-1928) who, with Gloag, was appointed chairman of the general tribunal for Scotland, sitting in Glasgow, we move, in the ministry's evaluation, from the inept to the incomparable. In one respect it was distinctly odd that a professional judge be appointed as chairman of a tribunal whose "domesticity" was emphasised at the parliamentary stage of the legislation. The recommendation, however, probably came from the Scottish Office which may well have been less conciliatory towards workers and more sensitive to the possibility of public order threats than the Ministry of Munitions, thereby justifying the appointment of a strong judicial personality.

Fyfe was born in Dundee, the son of Thomas Fyfe, secretary of the Perth and Dunkeld Railway, and spent his early years in legal

practice in Edinburgh.<sup>16</sup> After a year in Greenock, he became a partner in the Glasgow firm of Messrs Wilson & Caldwell where he began to specialize in commercial business. He built up an extensive mercantile practice, acting for some of the leading shipowning firms and for members of the Scottish Shipmasters' Association called before Board of Trade enquiries. It is not, however, clear whether this involvement brought him into close contact with the Clyde shipbuilders who were, of course, to feature prominently at the munitions tribunals.

It is apparent that Fyfe was an outstanding member of the local bar for it was uncommon to appoint solicitors to the bench of sheriffs, whose ranks were normally filled by Edinburgh-based advocates. Yet Fyfe attained this honour in 1895, filling a vacancy as sheriff-substitute in Lanark. Six years later, he was transferred to Glasgow, which was in reality, if not in form, a promotion. He was instrumental in the drafting of the important Sheriff Courts Act 1907 and gave evidence to several royal and departmental commissions. He published works on Scottish bankruptcy law, on the law and practice of the sheriff court and, of course, on the Munitions Acts which ran to three editions between 1916 and 1918.

Fyfe was active politically before his elevation to the bench. For a number of years, he was secretary of the Glasgow Conservative Association, developing and improving its organisation, and securing a favourable interpretation of the lodger franchise legislation. This enabled his party locally to improve electorally on its previous performances, and in particular, to triumph in 1900.

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<sup>16</sup> For biographical details, see the Bailie, Vol. 46, No. 1198, October 2, 1895, pp 1-2; ibid., No. 1449a, 25 July 1901; Glasgow Herald June 12, 1917; The Times, March 16, 1928; Scottish Country Life, Vol. 15, April 1928, p. 166; Who Was Who, 1916-1928.



As we shall see, the qualities which he sought to bring to the munitions tribunal were sternness tinged with a touch of humour, manifesting a contradictory urge both to speak down to munitions workers appearing before him, and also to establish a rapprochement with them; perhaps, indeed, modelled on Lloyd George's populist appeals.<sup>17</sup> What he stressed consistently was the prevailing spirit of sacrifice (as he construed it) and the bounden duty of workers not to steal a march on the rest of their comrades at home and in the trenches. Strikes and industrial indiscipline were morally reprehensible because they were the actions of selfish individuals at a time when all were expected to limit, if not forego, advancement in the "national interest".

When a group of strikers of military age appeared before him on one occasion, his condemnation was unequivocal.

"Any man who took part in a strike in his country's day of stress showed himself unable to grasp the national situation and his own feeling had been for some time that the best way, perhaps the most effective way of making them realise the situation would be to send them out to the hottest part of the front. There, he thought, they would probably realise. Of course he had no power to do that. He sometimes regretted he had not. It was disgraceful that young men of military age should deliberately and defiantly ignore the Munitions Act".

Typically, however, he proceeded to impose a "modified" penalty of £5.<sup>18</sup>

One ought, however, to acknowledge that he could, on occasion, be forthright in his condemnation of employers. Corporatist advances, after all, also require the subordination of private, capitalist

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<sup>17</sup> On one occasion, an apprentice brassfinisher applied for a leaving certificate on the ground that he did not like his job and desired to go into engineering. Sheriff Fyfe observed that he "didn't like his job either but that he'd have to keep it till the war was over".

<sup>18</sup> See Glasgow Herald, May 4, 1916.  
Ibid., November 12, 1917.

interests to the bureaucratically defined national interest. Thus one minor but notable instance occurred in December 1916 when six charge hand carpenters sought leaving certificates in response to their employers' refusal to award them overtime rates.<sup>19</sup> The employer, a firm of Partick shipbuilders, (probably the Meadows Side Shipyard) explained that the men had not processed their claim "through the proper channel", presumably in the form of a grovelling request to the foreman charge hand. Sheriff Fyfe wasted no time in putting his message across.

"I wish some employers", he said,<sup>20</sup> would get away from domineering methods. There would be less friction if employers would adopt less of the attitude, 'It is for us to say'. At the present time, it was not for employers to say. He had no sympathy with that attitude",

and with a flourish, he sent them all packing to hold a conference. The maintenance of social peace, in accordance with the dictates of the Ministry of Munitions, was his principal remit. He did not always get the chemistry right, for experimentation was unavoidable. But his sternness and intimidatory techniques achieved a level of success which clearly satisfied the ministry, in spite of the highly explosive atmosphere.

As well as presiding at munitions tribunals, Fyfe was also called upon to act as arbiter nominated by the Board of Trade to settle wage disputes, and in this capacity, he often voiced similar sentiments. For example, in settling a claim between Glasgow Corporation and the Municipal Employees' Association, he observed that it was,<sup>21</sup>

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<sup>19</sup>Ibid., December 25, 1916.

<sup>20</sup>Ibid.

<sup>21</sup>Ibid., October 5, 1917; LAB2/144/IC4060/2 (September 24, 1917). For his award in the dispute between the Amalgamated Society of Woodcutting Machinists and Glasgow Corporation Tramways Department, see LAB2/149/IC3939 (May 30, 1917).



"... frequently erroneously assumed that the object of such awards was to bring present-day remuneration up to the full equivalent, in purchasing power, of pre-war wages; but this he did not think was their purpose. These awards did not contemplate that operatives, any more than any other class of the community, were to be entirely relieved of their quota of the war sacrifice, which was common to all classes..."

Indeed, Fyfe himself was to suffer the tragic loss of his two sons, killed in battle, in addition to which he lost his wife in the traumatic year of 1915. It is impossible not to reflect that domestic bereavements were factors conditioning the attitudes of both munitions and military tribunal chairmen to those individuals appearing before such bodies.<sup>22</sup>

Fyfe was, nonetheless, a shrewd operator in a difficult and sensitive situation. Within the confines of the tribunal, he attempted a "no-nonsense" approach which was always likely to court disaster if taken to the logical conclusion - the imprisonment of strikers - which the legislation at the time was unable to prevent. Yet danger to the ministry's objectives could just as easily flow from too lenient an attitude, or from displays of weakness, on the part of fellow-chairmen. Whether the dominant feature of the Glasgow tribunal was the wielding by the chairman of the judicial bludgeon or was the spectacle of a judicial retreat in the face of a trade unionists' verbal counter-attack, the turbulent scenes of the first nine months of the tribunal receded immediately following the severe punishments imposed after the deportation strikes in March 1916. In this respect, Fyfe's harsh, uncompromising and disciplinarian tactics ultimately succeeded in restoring order to the tribunal, if not always to the factories outside. For as chairmen of the

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<sup>22</sup>I am grateful to Douglas Gourlay of Aberdeen for making this point.

Scottish division of the Commission on Industrial Unrest, he well knew that working class grievances received prompt attention only when a strike was threatened.<sup>23</sup> His power was therefore limited to altering behaviour within the tribunal. He could not influence workshop conduct for the better (as the Ministry of Munitions defined it) by a succession of convictions. What he did attempt by his conduct as chairman, though not always successfully, was to seek not to exacerbate the situation in the factories, a task which his fellow-chairmen were, in the ministry's opinion, unable to accomplish.

Yet it is important to recognise the qualities demanded of such a chairman. He was required to acknowledge that the law was coercive, that it had, on occasion, to be applied uncompromisingly, that it embodied executive policy and that as a judge (or, perhaps, despite being a judge) he was required to enforce a policy, as much as a law. Therefore, it was not his juridical qualities which mattered, but his own commitment to a bureaucratically determined code of discipline. His role was that of policeman, and not judge nor politician or lobbyist; policy-enforcer and not policy-maker gratuitously offering suggestions and venturing opinions from behind the shield of judicial independence.

"You have to remember that for some years past there has been considerable nibbling at the individuality of the worker. During all his working hours he is merely a cipher - known by a check number."<sup>24</sup>

For "worker", read "munitions tribunal chairman." It was Fyfe's achievement in imbibing this lesson and evidently approving it which made him the Ministry of Munitions' favourite son among tribunal

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<sup>23</sup>Cf. M.B. Hammond, British Labor Conditions and Legislation During the War, (New York: Oxford University Press, 1919) p. 254.

<sup>24</sup>Clyde Workers' Committee statement to Lloyd George, published in the Worker, January 15, 1916, cited in Hinton, op.cit., p. 45.



chairmen, and which no doubt earned him the CBE as his reward after the war. For his fellow Glasgow chairmen, however, their failure to remember the lesson resulted in the ignominious order of the boot.

There was yet one other lawyer on the staff of the Glasgow tribunal who merits consideration. This was the tribunal clerk, Thomas F. Wilson, who worked closely with Fyfe throughout the war. His role was not confined solely to organising the day-to-day activities of the tribunal, arranging for the order of proceedings or even offering legal advice when the occasion demanded. His opinions in matters of policy were also sought, though not always followed. Whether he identified closely with Fyfe's general approach is unclear since the necessary evidence is lacking; he was probably more cautious, but his position clearly allowed him to be so.

The son of a Glasgow builder and contractor, he was born in 1862.<sup>25</sup> He became a solicitor, practising as a partner in the firm of Messrs. Wilson, Chalmers and Hendry. Standing for election as a Liberal to the Uddingston division of Lanarkshire County Council, he was elected by one vote and subsequently took an active part in the council, particularly on bill committees, as well as chairing the Public Health committee. He was responsible for many innovations in this department. For example, it is claimed that under his influence, Uddingston became the first rural area in Scotland to inaugurate the daily removal of household rubbish and jointly erected the first destructor for the area.<sup>26</sup> A sewage purification scheme was introduced for the first time in a non-burghal district which brought significant improvements in sanitary and health

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<sup>25</sup> Baillie, Vol. 90, No. 2332, June 27, 1917, pp. 3-4; Stother's Glasgow, Lanarkshire and Renfrewshire Xmas and New Year Annual, 1911-12, p. 151. According to this latter source, Mrs Wilson was "interested in all noble subjects".

<sup>26</sup> Baillie, Vol. 90, op. cit., p.3.

standards. It was not surprising, therefore, that Wilson was selected as Liberal candidate for the Lanarkshire North-East by-election in 1909, successfully holding the seat for his party, an achievement maintained through the two general elections of 1910.

He did not remain long in Parliament, however. Instead, he accepted the appointment of Clerk of the Peace for Glasgow where his work brought him into contact with Fyfe. His experience of the busiest sheriff court in Scotland with a huge criminal division, made him the appropriate choice of the Ministry of Munitions for the clerkship of the munitions tribunals in the city, a position which proved enormously lucrative. Indeed, in the first nine months of the tribunal, Wilson received £1327:1/6d despite a ministry limit of £1,000 for comparable salaried posts. The problem for the ministry apparently was that he was not a salaried official, nor drawing a pension, so the maximum limit was difficult to enforce.<sup>27</sup> He was also called upon to assist in the drafting of subordinate rules. For example, there were many technical difficulties relating to the difference between Scots and English procedure in enforcing tribunal orders. A particularly difficult issue concerned the method of compelling a Scottish employer to issue a leaving certificate to a worker in the specific circumstances of lay-off or constructive dismissal stipulated in section 5(2) of the 1916 Act.<sup>28</sup> The subsequent order,<sup>29</sup> apparently drafted by Wilson, was made necessary

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<sup>27</sup> LAB2/173/MW167737/7 (March 31, 1916). The scale of fees for clerks was originally 1 guinea per day of sitting, plus 1 guinea per complaint processed. Subsequent alterations to the amounts took place at various intervals. See MUN5/353/349/1, *op.cit.* For the complaint of the tribunal chairman, Sir William Clegg, the "Tsar of Sheffield", that he was underpaid for his patriotic service at the tribunal, see MUN5/97/349/8 (May 13, 1916). For Clegg, see chapter nine (*infra*).  
<sup>28</sup> See the detailed discussion in [SRO] HH31/22, "Munitions etc. 1915-1917".  
<sup>29</sup> Munitions Tribunal (Sc.)(Amendment) Rules 1916, No. 315/S.22, May 27, 1916.



because it was found more difficult for workers with a certificate from the tribunal to obtain employment than for those with certificates granted by their ex-employers.<sup>30</sup>

Deeply involved in the cluster of committees which mushroomed during the war, Wilson became a chairman of recruiting, Belgian refugee, naval and military pensions, and war savings committees, as well as acting as secretary to the Scottish division of the Commission on Industrial Unrest in 1917, whose chairman was, of course, Sheriff Fyfe. On a number of occasions, he was also appointed to act as an arbiter to resolve differences between employers and unions.<sup>31</sup> Certainly, his interventions during munitions tribunal hearings were rare and unspectacular, amounting to no more than the odd observation or two on the evidence being presented or asking a particular question arising therefrom.<sup>32</sup>

But it was his influence in the selection of personnel for the Glasgow munitions tribunal which we may note. His judgment of the abilities of assessors and potential assessors was clearly welcomed by the Ministry of Munitions. For example, apart from frequent suggestions as to possible candidates, his favourable opinion of individual assessors who subsequently resigned their positions could persuade the ministry to write to such individuals requesting that they reconsider their resignation. One such case in 1917 was that of John

<sup>30</sup> See letter from Beveridge to Under-secretary for Scotland, April 24, 1916, in HH31/22, op.cit.

<sup>31</sup> For example, a wage dispute between the Smiths and Strikers' Union and the National Projectile Factory at Cardonald. See Labour Gazette, June 1918, p. 244; LAB2/425/IC2432/2 (May 14, 1918). For other hearings involving Wilson as arbiter, see LAB2/486/IC7334/2-3 (Amalgamated Society of Farriers, Manchester, October 1918); LAB2/498/IC7562/2 (National Union of Corporation Workers and Edinburgh and Leith Corporations, Gas Commissioners and Water Trust, October 1918); and LAB2/188/IC4775/4 (British Aluminium Company, Kinlochleven and Workers Union, November 8, 1918).

<sup>32</sup> Cf., the leaving certificate cases reported in the Glasgow Herald, August 24, 1915 and ibid., December 23, 1915; also a case involving apprentices, in ibid., June 6, 1917.

Thomson, the general secretary of the Associated Blacksmiths<sup>33</sup> who nonetheless replied that he had "done my little share, often at great personal inconvenience". Inasmuch as Wilson considered Thomson's assistance "most valuable",<sup>34</sup> we may be sure that the "national interest" was well served by Thomson's presence. Whether the class interest of his fellow trade unionists upon whom as assessor, he sat in judgment, was as adequately represented is more debatable.

In the controversy surrounding the removal of the three local tribunal chairmen, Wilson tended to offer cautious advice to the Ministry of Munitions. He saw political and industrial dangers in any changes among the chairmen. Outside observers, he suggested, would conclude that the Act's administration on the Clyde was unsatisfactory or that chairmen would be seen to be under threat of removal if not sufficiently suppliant to the ministry's wishes; and in writing to Wolff in these terms, he enclosed a recent copy of Forward to support his points.<sup>35</sup> The fact is, of course, that his arguments were unanswerable. The chairmen were under threat precisely for these reasons.

Other difficulties to which he pointed, included the problem of finding suitable replacements as chairmen. He did not think Sheriff Fyfe's other commitments would allow him to take more than emergency, or specially difficult, cases; or find more than one day a week for prosecutions<sup>36</sup>. It is just possible that Wilson's defensive posture,

<sup>33</sup>For Thomson, generally, see Angela Tuckett, The Blacksmiths' History (London: Lawrence & Wishart, 1975) passim. For William Gallacher's criticism of Thomson during the "tuppence-an-hour" controversy in February 1915, see Gallacher, op.cit., p.35.

<sup>34</sup>LAB2/47/MT107/1, "GMT, No.8 Division, Scotland: Constitution File", R.H.H. Keenlyside to Thomson, and reply, November 20, 30, 1917. Keenlyside was head of the munitions tribunal section of the Ministry of Munitions.

<sup>35</sup>Ibid., Wilson to Wolff, February 19, 1916.

<sup>36</sup>Ibid., January 7, 1916.



while clearly recognizing Gloag's inadequacies, was born of loyalty to fellow-members of the local legal profession. Certainly, he believed that Andrew ought to be retained as he was a "long way senior" to Gloag or Gibson,<sup>37</sup> though it seems he saw his retention for the more administrative task of granting or refusing leaving certificates, rather than for the, apparently more contentious, ordering of work prosecutions. In the event, as we shall see in chapter six, Wilson's advice on this matter was not followed. Indeed Wolff believed that it was for "private reasons" that Wilson pleaded Andrew's case.<sup>38</sup> What these "private reasons" were, we can only surmise; though, as implied above, Wilson may well have thought that the whole distasteful episode should be handled with as much propriety as possible, particularly given the closeness to each other of lawyers in a provincial community, and given the subsequent mutual embarrassment which would undoubtedly ensue from the actions of a remote ministry in London.

Clearly lacking the ruthlessness of the officials at the Ministry of Munitions, and more circumspect than Fyfe, he nonetheless displayed a keen professionalism which impressed the ministry sufficiently to merit a knighthood for his services in 1918. Not in a position to exert a strong influence on the pattern of events, his importance probably lies in his role in ensuring that the dull routines of the busiest tribunal were maintained throughout the traumas which afflicted it.

#### Workmen's Assessors

One of the noteworthy features relating to the tribunal personnel

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<sup>37</sup>Ibid., February 19, 1916.

<sup>38</sup>Ibid., Wolff to Beveridge, February 24, 1916.

concerns the ambiguous role assumed by those appointed as workmen's assessors to the tribunals. On the one hand, nominally expected to represent the employee's viewpoint in the final adjudication, they were simultaneously a central element in the enforcement machinery of a measure explicitly framed to inhibit trade unionism. Thus in exchange for influence on the tribunal (for power resided with the chairman); and in exchange for official recognition as an integral feature of the apparatus of the wartime state, they were expected to subordinate the interest of their class to that of the national interest wherever the two were in conflict. It is hardly surprising that this "system contradiction" was widely exposed in the shape of trade union criticism throughout the country of the quality of workmen's representatives. Yet given that their appointment as assessors rendered them almost as straightjacketed as munitions workers themselves, it is difficult not to appreciate their dilemma. For the collaboration of the national trade union leaders had left them with little choice but to seek to exert their modest influence on the tribunal proceedings. There was, in truth, no prospect of any heroic boycott on the part of Labour. The contradictory poses of an "oppositional culture"<sup>39</sup> and the subordination of class differences in order to further the national interest, came face-to-face in the tribunal. The latter impulse, of course, invariably prevailed; but ironically, it did so on terms which occasionally favoured that oppositional culture and inhibited the employing class.

For the most part, however, the tribunal operated as, and was perceived as, a fetter on traditional trade union freedoms; and workmen's assessors were, of course, part of this restrictive mechanism.

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<sup>39</sup>James Hinton, Labour and Socialism: A History of the British Labour Movement (Brighton: Harvester Press, 1983). Subsequent references to Hinton are to The First Shop Stewards' Movement.



Yet, despite this, hostility to workmen's assessors in Glasgow, though occasionally heard within the CWC, was scarcely noticeable. Partly, they tended to adopt a low profile during hearings; interjecting during the proceedings only on rare occasions. This itself might have been a cause for complaint, but the fact is that a more visible and controversial target, particularly in the shapes of Professor Gloag and Sheriff Fyfe, could be identified. Additionally, the alleged split between the rank-and-file and local trade union officials (a number of the latter were appointed as assessors) proved in practice to be less pronounced than previous accounts of the Clydeside shop stewards's movement imply.<sup>40</sup> The schism undoubtedly existed. It is manifested in several munitions tribunal hearings where the officials were by-passed. Yet the local full-time officers, as well as doubling as assessors, frequently appeared on the "other" side of the fence, representing their members (with a vengeance) before the tribunals. It is in this sense that the relationship between the rank-and-file and trade union leaders is often subtle and complex, and reflects the tensions which corporatist discipline can impose within the structures of trade unionism.

This untidy pattern will become clear when we examine specific tribunal proceedings. For the moment, the identification of a number of workmen's assessors in Glasgow, especially those who, on other occasions, actively defended their members against prosecutions, will, we hope, underline two features in particular. Firstly the identification may cast light on the contradictory elements of a law which sought to integrate trade union officials into the apparatuses of the state, in order to confer added legitimacy upon the tribunals.

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<sup>40</sup> This seems to be particularly true in the case of the shipbuilding trades examined by Alastair Reid in his thesis, "The Division of Labour etc..." op.cit.

Secondly, it will, we believe, emphasise the need to avoid romanticising rank-and-file activism as a permanent struggle conducted against the conformative tendencies of local trade union officialdom.

The first batch of workmen's assessors was appointed from the courts of referees established under the national insurance legislation. Yet, as G.D.H. Cole indicated, "the part played by the labour assessors has been so far negligible."<sup>41</sup> Indeed, he continued, it brooked no argument that appointments from the national insurance panels were "unlikely to secure the right men for the quite different functions which munitions assessors have to perform." As a result, claimed Cole, "all sections of workers joined in the demand... for the revision of the panels of assessors if the system was retained".<sup>42</sup> This eventually led the Ministry of Munitions to invite nominations directly from the trade unions.<sup>43</sup> In point of fact, many of the original worker-nominees to the Glasgow tribunal (or to the Scotland tribunal sitting in Glasgow) were trade unionists whose services were retained in spite of the adoption of new criteria for appointment.

Among those trade union officials selected to the panels were John Thomson, general secretary of the Associated Blacksmiths; William Lorimer, his assistant general secretary; Robert Climie, district organiser of the Workers' Union; William Brodie and William Kerr, organising district delegates of the ASE; Sam Bunton, the ASE district secretary; Harry Hopkins of Gowan Trades Council, who replaced Bunton as district secretary when the latter joined the Ministry of Labour in 1917; James Fulton, president of the Associated Iron-moulders of Scotland; Owen Coyle, county councillor and

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<sup>41</sup>Nation, November 27, 1915, p. 325.

<sup>42</sup>G.D.H. Cole, Trade Unionism and Munitions, op.cit., p.116.

<sup>43</sup>Cf., E. Sylvia Pankhurst, The Home Front (London: Hutchinson, 1932)p.188.



district organiser, then general secretary, pro tem, of the Amalgamated Society of Steel and Iron Workers of Great Britain; W.G. Sharp and James Conley, respectively district secretary and district delegate (till 1916) of the Boilermakers' Society; R. Mitchell, district secretary of the Amalgamated Society of Woodcutting Machinists; Alexander Richmond of the Sheet Iron Workers' Union; Alexander Turnbull, district secretary of the National Society of Coppersmiths; Councillor George Kerr, Scottish divisional organiser of the Workers' Union; J.F. Armour of the Masons; William Lawson, district organiser of the Carpenters and Joiners, and T. Barron, its trade secretary; Councillor William Westwood J.P. of the Shipwrights' Association (later, its general secretary, 1929-45) and of the Glasgow Labour Party; and Robert Reid, district secretary of the Electrical Trades Union. Among the female assessors appointed in Glasgow after the passing of the Amendment Act in 1916 were Agnes Adam and Lois Young of the National Federation of Women Workers; and Agnes Dollan of the Women's Peace Crusade.<sup>44</sup>

Many other names of worker-assessors appear either in the Ministry of Munitions papers or in the newspaper reports of hearings. Undoubtedly a number will have been "unrepresentative" legacies from the unemployment insurance panels; while others were possibly trade unionists holding unpaid elected posts and still working at their trades. Because neither of the sources just mentioned state whether the assessors named were members or officials of particular unions, nor, in the case of the ministry papers, is other than the home address normally provided, it is impossible to confirm, by cross-checking.

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<sup>44</sup> The names are taken either from a small proportion of newspaper reports of hearings or from lists in LAB2/47/MT107/1, op.cit. For the sad circumstances surrounding Conley's retirement as a full-time union official, see J.E. Mortimer, History of the Boilermakers' Society, Vol. 2: 1906-1939 (London: Allen & Unwin, 1982) pp 86-7. For other assessors, see infra.

with the lists in, say, the Glasgow Trades Council annual reports or in the Labour Year Book 1916 or the Fabian Research Department's Gazeteer of Trade Union Branches (which only lists branch secretaries) whether or not, for example, the J. Gardner named in a newspaper report as a workman's assessor, was the National Union of Railwaymen No. 1 branch delegate to the Glasgow Trades Council. The problem of identification is further compounded in the case of those assessors with common names such as John Brown. Delegates of that name were appointed to the trades council both from the Blacksmiths and from the Postmen's Federation. In the case of many other assessors, no information at all has been discovered, apart from their names.

Similarly, it is possible that the assessor named as J. Taylor was the ILP anti-war Glasgow councillor, John S. Taylor, though it is not possible to verify this point.<sup>45</sup>

What is clear, nonetheless, is that of the trade union officials named above, a number of them were in fact appointed following the criticisms voiced against the original panelists. Thus Lorimer, Climie, Hopkins, Coyle, Mitchell, Richmond and Turnbull were recruited as assessors long after the original appointees, while a number of the existing appointees to one of the tribunals (whether the general or the local) were asked to sit also on the other tribunal. But it does not follow that the new appointments were in response to the complaints, and directly flowed from them. The procedure which the Ministry of Munitions employed, that is, an invitation to unions affected by the Munitions Act to nominate assessors within fourteen days, which names would thence be forwarded to Arthur Henderson's National Advisory Committee on Labour Output,<sup>46</sup> did not mean that

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<sup>45</sup> See Harry McShane and Joan Smith, Harry McShane: No Mean Fighter (London: Pluto Press, 1978) pp 82-3 for reference to Taylor.

<sup>46</sup> ASCJ, Journal, April 1916, p. 212.



action would follow. The probability is that the names were swallowed up in the enormous maw of the London bureaucracy. For despite the attempt to appease the unions over names, many of the suggestions for new panelists in fact emanated from the tribunal clerk, Thomas Wilson. He was frequently vexed by the problem of finding an adequate number of assessors in view of the resignations which occurred and of the difficulties which those working at their trades experienced in trying to obtain time off work to attend hearings.<sup>47</sup> Thus even without the impetus of criticisms of existing workmen's assessors, the fact that panelists might move out of the area, might die unexpectedly, have too much work or be recruited into the Army, would all contribute to the change in the composition of the workmen's panel.

Nonetheless, the striking feature of the most prominent of the worker-nominees to the Glasgow tribunal was their capacity to slip easily from a role as tribunal assessors sitting in judgment on members of their own class (though not on members of their own union) to a diametrically opposed role the following day when they might be found aggressively attacking the tribunal justice which callously dragged their constituents before a crass and abominable prosecution. It is this quality on the part of local officials to defend vigorously their members' interests before the tribunals which critics of trade union officialdom at the local level have conveniently ignored, as a result of which the internal schisms are presented in too exaggerated a fashion. This is not to argue against the principle of rank and file democracy and of decentralised autonomy but to emphasise that its relationship to local trade union officialdom is not inherently antithetical and hostile, with the latter perpetually

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<sup>47</sup> LAB 2/47/MT 107/1, op.cit. Wilson to Llewellyn Smith, March 1, 1918. This proved a problem for tribunal sittings throughout Scotland.

attempting to stifle the spontaneity of the former. The absorption of the local officials into the corporatist organs of the state had its limits where the class interests of their members were thought to be under threat by opportunistic employers. The Fairfield copper-smiths were, after all, following official union instructions.<sup>48</sup> Even the famous "tuppence an hour" strike in February 1915 was acknowledged by William Gallacher to have enjoyed the stamp of limited official approval.

"The strike was, and still is, wrongly referred to as an 'unofficial' strike. Such a term is entirely misleading. Branch officials, district officials and in some cases, executive officials (like myself) were involved. The more correct term for such a strike is 'spontaneous strike'. Such strikes have played an important part in the development of the trade union movement and are often recognised and supported by the national officials. Such a strike is necessary when something occurs, leaving only the option of submitting or fighting. It may be the introduction of a non-unionists, where trade union membership is insisted on by the union as a condition of employment. It may be a cut in a recognised rate or, as was the case at Weir's, the introduction of privileged workers from outside at the expense of Weir's own employees."<sup>49</sup>

This frank recognition by Gallacher that trade union officialdom was not invariably the enemy of devolved authority is the more surprising given his consistent vilification of the local full-time officials in Glasgow. Thus he identified Bunton, Brodie, Sharp, John Thomson and Lorimer as the embodiment of collaboration and class harmony with the employers and with the state.<sup>50</sup> Yet as we shall see in subsequent chapters, such fulsome advocates of the national interest were not averse to casting aside such noble sentiments when their constituents' workshop interests were seriously threatened by the

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<sup>48</sup>Gallacher, op.cit., p. 63 even claims that the imprisoned Fairfield shipwrights were acting under official union instructions.

<sup>49</sup>Ibid., p. 42. Cf., McLean (1983), op.cit., p.12.

<sup>50</sup>Gallacher, op.cit., pp 35, 37, 64, 81-83, 87-9. For Lorimer, see Tuckett, op.cit.



Munitions Act. No doubt part of the explanation for this dual perspective lies, first, in the perceived need by the officials for some ritual genuflection toward populist sentiment within the ranks of local trade unionists. Second, the fact that the Munitions Act could be mobilised by an individual employer against their members meant that it was easier to conceptualise the Act, not as a measure necessary in the national interest (an interest of which they approved), but as the private instrument of the employer. The capacity of law to individualise otherwise collective-political conflict ironically made it easier for trade union officials inveigled into the machinery of the corporatist munitions sector, to simplify their analysis. No longer was the implementation of the Munitions Act a necessary step in restoring order and unity to industrial relations with the object of achieving the national goal. It was now construed as the resumption of industrial conflict between employers and trade unionists initiated by the aggressive conduct of employers for their own selfish aims.

Indeed the transformation of attitudes is well captured in the conversion of trade union leaders from support for the Munitions Act on its enactment, to insistent demands for its amendment (though not its repeal), a process of change which we discussed in chapter two. Within Glasgow, the views of W.G. Sharp of the Boilermakers, a member of both the local and general tribunals, a resolute defender of his members prosecuted before the tribunal, and object of savage criticism by the revolutionary shop stewards - "Bill Sharp had ratted on the movement during the war - he was a boilermakers' official and had taken a job with the employers."<sup>51</sup> - adequately convey the transition.

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<sup>51</sup> McShane, *op.cit.*, p. 131. Cf., Gallacher, *op.cit.*, p. 89 where it is stated that Sharp became a technical adviser with the employers. In early 1917, Sharp's name was submitted by his union to the Ministry of Munitions as a temporary technical adviser. See USB, *Journal*, March 1917, p. 20. On his appointment to the Shipbuilding and Engineering Employers' Federation [sic], see the *Shipbuilder*, Vol. 16, June 1917, p. 324.

Replying to a presentation made to him by members of the Boilermakers' Society, he said,

"At a time like this he supposed he would be expected to make some reference to the war. He felt strongly the many malicious statements which were being made against the working classes. The working men had never worked harder in their lives than they were doing now. There had been a few slackers, there was no question about it, and they all knew what he would do with them. But he thought that every man in that room realised how necessary it was that everyone would have to do his utmost in order to bring the war to a successful conclusion. That led him on to make some reference to the Munitions Act. Although he had not been against it at the first, he never for a moment thought that it would be interpreted in the narrow, miserable one-sided manner in which it had been by certain employers. (Loud applause.)" 52

Thus while politically advanced rank-and-file movements conceptualized the employers (together with union leaders) as part of the apparatus of the capitalist state, individuals like Sharp, who probably represented the dominant strand within the trade union movement, continued to cling to the pluralist conception of the separate interests of employers and trade unions. For the duration of the war, they were expected to work in harmony. However, once the employers quickly began to abuse their opportunities under the Munitions Act to make sectional gains at the workers' expense, on the pretext of advancing a national interest which was acknowledged to stand above sectional interests, trade union officials could no longer feel inhibited in pressing for their own narrow interests. Thus not only was a campaign of law reform conducted at both the official and unofficial levels, but the Glasgow tribunal proceedings themselves witnessed the hitherto patriotic and moderate local union officials conducting a vigorous and aggressive defence of those trade union

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<sup>52</sup>USB, Monthly Report, November 1915, p. 76; Govan Press, October 22, 1915.



members subjected to legal intimidation by their employers. In principle favouring a policy of industrial peace, compromise and collaboration, the local officials such as Sharp, Brodie and Bunton were, nonetheless, frequently resolute in defending their members before the tribunal.

One important qualification must, however, be made. Given the antipathy existing between the local officials and leading members of the CWC, it is no surprise to learn that prominent members of the latter, when prosecuted before the tribunals, were on occasion defended by other than their trade union representatives. For example, the shop stewards prosecuted after the deportation strikes in 1916<sup>53</sup> were defended by the Labour lawyer, Rosslyn Mitchell,<sup>54</sup> while the strikers prosecuted after the Dalmuir gun-mounting dispute in December 1915, were also defended by a local solicitor. On the other hand, it was Sam Bunton, the reviled ASE official, who represented James Bridges, the Weir shop steward who was later deported, in an abortive prosecution in October 1915. There was admittedly a greater tendency, in the case of collective industrial action, for trade union officials to defend members engaging in official disputes, and to abandon them where the industrial action was unofficial, as in the case of the Fairfield shipwrights. Yet this principle was not always consistently followed, and unofficial strikers were able, in some cases, for example, that involving the Lobnitz shipyard holders-on, in September 1915, to avail themselves of the services of their union representatives. The rich variety of practice virtually defies an explanation applicable to every situation, but clearly reflects the officials' own assessments of the justice of their members' case.

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<sup>53</sup>For this and other cases cited here, see later chapters.

<sup>54</sup>His fees were "extremely moderate". See Clyde Workers' Committee, Defence and Maintenance Fund: Financial Statement, September 15, 1917; copy in Highton Collection on Munitions, Dept. of Economic History, University of Glasgow.



Employers' Assessors

Those selected to the employers' panel included a number of prominent representatives of the leading engineering and shipbuilding companies in the district. Yet they were not frequently called upon to adjudicate, given the policy of the Ministry of Munitions of seeking to appoint assessors for particular cases from trades other than those directly involved in hearings. Thus individuals such as Robert Baird of the Coalowners' Association and James Dalrymple, general manager of Glasgow Corporation Tramways Department;<sup>55</sup> Andrew S. Biggart (1857-1917), chairman of the civil engineering firm of Sir William Arrol & Co., Ltd.;<sup>56</sup> Thomas Lyon, another building employer; and representatives of the iron and steel trades such as John King of the National Light Castings Association;<sup>57</sup> James Steven, president of

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<sup>55</sup> Dalrymple, as we shall see, had few admirers among the Clydeside labour movement, and was later to insist on extending the Munitions Act to his own employees, ostensibly to prevent other employers from poaching his staff. John Wheatley's interpretation of his motive differed fundamentally. See Glasgow Herald, February 3, 1916. A historian has recently described him as "autocratic". See Christopher Harvie, No Gods and Precious Few Heroes: Scotland 1914-1980 (London: Edward Arnold, 1981) p.11. Perhaps it was not for nothing that the Army's recruiting office in Glasgow was at the Tramways Department's head office in Bath Street, where John Maclean conducted his anti-war meetings. Forward accused him of constituting himself the local Lord Derby. "At one time", it noted, "he had enlisted so many of his men that there was a danger of the Tramway service coming to a sudden stop for lack of motormen." He also sacked five married men who refused to attest, claiming that work was slack. In so doing, he blatantly ignored the LIFO principle normally operative in cases of slackness of work. One worker was offered his job back but only if he agreed to attest. See Forward, December 11, 1915; ibid., March 11, 1916.

<sup>56</sup> See his obituary in the Glasgow Herald, 27 April, 1917. While it is nowhere expressly stated, it seems clear that he was the brother of Thomas Biggart, secretary of the Clyde Shipbuilders and of the local engineering employers' association and who was closely involved in a number of controversial tribunal prosecutions.

<sup>57</sup> King was a former Glasgow bailie who had solicited the appointment as assessor by writing to Beveridge with the backing of Sir Archibald Denny of Denny's shipyard, Dumbarton, who had resigned as assessor in September 1915. See LAB2/47/MT107/1, op.cit. As we shall see in chapter six, King was to become critical of the conduct of one of the tribunal chairmen and to write to the ministry outlining his complaint.



the Scottish Brassfounders; R.M. McDougall, president of the Scottish Coppersmiths;<sup>58</sup> and J. Fleming, of the Motherwell steel firm of Marshall, Fleming & Co., were all appointed to the panels alongside the large number of representatives of the engineering and shipbuilding sectors. Among this group were to be found W. Rowan Thomson, president of the local engineering employers' association;<sup>59</sup> George Brown, Coventry Ordnance; N.O. Fulton, Albion Motors; James Lang, Lang's of Johnstone; W. MacFarlane, Armstrong Whitworth, Airdrie; Sam Mavor, Mavor & Coulson Ltd; Hugh Reid, N.B. Loco; Archibald Campbell, Beardmore;<sup>60</sup> J. Fullerton, Messrs John Fullerton, Paisley, shipbuilders; Hugh MacMillan and George Strachan, Fairfield; J.R. Richmond, Weirs of Cathcart;<sup>61</sup> A. Anderson of Queen's Park Loco; and Sam Crush of Yarrow's Shipyard.<sup>62</sup> Many of these firms were, of course, the venues of radical shop steward activity; while in different contexts they were, as employers, among the many firms involved in legal proceedings before the tribunals, either defending claims that they had implemented unauthorised wage changes; prosecuting strikers or bad time-keepers; or refusing to grant leaving certificates. The composition of the tribunals often, indeed, took on the character of an incestuous, if not always cosy, relationship among its personnel, especially where, as sometimes occurred, the same three panellists (chairman and two assessors) were re-appointed for subsequent hearings.

<sup>58</sup> Both Steven and McDougall were signatories to a memorial, Acceleration of Output on Government Work, which the Scottish munitions employers' federations sent to Asquith and to Lloyd George in June 1915 and which no doubt hastened the passage of the Munitions Act.

<sup>59</sup> He was the inventor of the Rowan premium bonus system. See Hinton, op.cit., p.89.

<sup>60</sup> He was to feature prominently in the Beardmore gun-mounting shop prosecution.

<sup>61</sup> On Richmond, see W.J. Reader, The Weir Group etc., op.cit., passim and Eric Wigham, The Power to Manage, op.cit., pp 90-91.

<sup>62</sup> For the "Sam Crush affair", see infra.

The surge of criticism directed nationally against workmen's assessors did not find its counterpart in the case of employers' panellists. As we shall see in the circumstances of the hounding of Professor Gloag (chapter six, *infra*) employers expressed dissatisfaction at the conduct of proceedings, but criticisms from this source were, over all, muted. For example, Matthew Paul, a shipbuilder, reported to the Clyde Shipbuilders' Association on his unsatisfactory experience as assessor at the Robb Caledon strike prosecution in Dundee, while W. Rowan Thomson echoed these sentiments in respect to his own experiences. When the Ministry of Munitions wrote to the employers' federations in January 1916 inviting suggestions, alterations or additions to the employers' panels, the executives of the local shipbuilders and engineers expressed their conviction that assessors with practical knowledge of working conditions be appointed. In particular, they felt that such appointees ought to be principals of firms, or managers or assistant managers in charge of workmen,<sup>63</sup> thereby no doubt seeking to eliminate those not from the munitions trades. In thus pressing for special consideration for their own specific viewpoints, their special pleading in fact betrayed the principle to which the government were publicly adhering: that the narrow, sectional interests of employers or trade unions mattered not, in the struggle for national salvation. But just as trade unionists had begun to demonstrate flaws in the ideology of unity, so now engineering and shipbuilding employers were displaying impatience with, if hardly rebellion against, the subordination of their class interests on the altar of corporatist strategy.<sup>64</sup>

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<sup>63</sup> Clyde Shipbuilders' Association [CSA], Minute Book No. 9, October 25, 1915 and January 10, 1916.

<sup>64</sup> They were, of course, angry with what they considered was the ministry's pusillanimous attitude to the dilution question at Lang's of Johnstone. See Hinton, *op.cit.*, pp 67-8; Scott & Cunnison, *op.cit.*, p. 144; McLean, (1972) *op.cit.*, p 7; *ibid.*, (1983), p.40.



In only one instance, however, did this issue assume significance for the Glasgow tribunal when Sam Crush, a director of Yarrow's Shipyard, Scotstoun, decided to register his dissatisfaction with the failure of the tribunal adequately to consider the difficulties of shipbuilding employers.

#### The Sam Crush Affair

The incident arose in April 1916 following the summary dismissal of three riveters from Yarrow's who had been accused by the management of smoking and idling at work. Under the 1916 Amendment Act which had recently come into force, it was provided under section 5(3) that a workman dismissed without reasonable cause, and with less than a week's notice or wages in lieu, was entitled to claim compensation from his employer, up to a maximum of £5. It was also stipulated in the section that an employer was required to report to the labour exchange within 24 hours the dismissal and the reason for the action so taken. Partly this was to enable a rapid deployment of the workman elsewhere, but it was also laid down in rules that the manager of the exchange was to send notice of such report to the workman, enabling him to lodge a complaint with the tribunal if he so desired. In the case of the three Yarrow's riveters, they had accepted their week's money on pay night (but not the wages in lieu), obtained their leaving certificates, and left the company. However, three weeks later they put forward a claim to the tribunal for statutory compensation, but were turned down by Sheriff Fyfe on the ground that the claim for compensation had not been made within 24 hours. As an editorial in the Glasgow Herald,<sup>65</sup> noting the requirement on employers to report dismissals within 24 hours, remarked at the time, "... what is sauce

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<sup>65</sup>Glasgow Herald, April 10, 1916.

for the goose is sauce for the gander." The only difficulty, however, was that the statute could not be read in such a way. The limitation applied expressly to the employer's notice to the labour exchange and did not impose any limitation on workmen in pursuing compensation claims. The probability is that Fyfe concluded that the riveters had been encouraged by their union to submit claims as a test case; for the possibility of their remaining unemployed for any length of time, given the leaving certificates in their pockets, was remote. Indeed, it seems that Fyfe smelled a rat. The ministry's local reports officer, J. Turner MacFarlane, wrote to his superior, Walter Payne, in London, pointing out that the brief report of the case in the Glasgow Herald (supra), together with its leader, "does not give in full some very emphatic remarks the Chairman made," concerning the scope and intention of the compensation provision.<sup>66</sup> MacFarlane added that the riveters (whose names were James Maclean, J.F. Harper and John Mullancy), had stated that they could not find employment for two weeks, but they only offered vague explanations. Nor could they deny the common knowledge that there was a great demand for men of their skill and that those with leaving certificates could obtain employment anywhere. The sheriff, "as he is always doing", hammered out the ministry's policy of constancy and discipline at work, thus justifying the tribunal's decision as being intended to "discourage any man who can get work, staying off work a single hour." He therefore warned the workmen that no man would be allowed to "lie off work", relying on the compensation provision, "which may make him indifferent for the moment to working for wages." As to the employers' failure to inform the labour exchange of the dismissals within the regulation 24 hours, this was brushed aside as a mere technical breach.

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<sup>66</sup> LAB 2/63/MT167/6, "Glasgow Local Munitions Tribunal, Constitution File", MacFarlane to Payne, April 10, 1916.



The men, however, lodged appeals, no doubt with the encouragement, or even the instigation of their union. T.F. Wilson, the tribunal clerk, in writing to Wolff in London, actually thought Fyfe's decision doubtful under the legislation and also inexpedient, even though a "considerable" delay between dismissal and claim could, he thought, be time barred.<sup>67</sup> Indeed, the appeal judge, Lord Dewar, did set aside Fyfe's ruling,<sup>68</sup> and the upshot was that, with the procedural objection of the employers repelled, the case was now remitted to the Glasgow tribunal for retrial on the merits.

This was heard a fortnight later when Sam Crush appeared on behalf of his firm, and William Mackie,<sup>69</sup> the Clyde district delegate of the Boilermakers' Society, represented the riveters. According to Crush,<sup>70</sup> the men had been found by him smoking between decks on a warship urgently required by the Admiralty. He cautioned the chief man of the squad and warned him that serious steps would be taken if the smoking were repeated. Four days later, the assistant manager again found them smoking on board and idling their time, as a result of which they were dismissed on February 29. Three weeks elapsed before he heard anything more about the matter. When asked by Fyfe to explain the delay, Mackie devastated the employers' case by disclosing that nearly all the time was lost in trying to effect a compromise with Crush. The outcome now turned on the issue whether dismissal without notice was too harsh a punishment for illicit smoking. Since Crush himself had admitted that smoking was permitted during overtime and on Sundays, and since the men insisted that they had never heard of a by-law in any Clyde shipyard against smoking, nor had known of any man instantly dismissed for doing so, the outcome was not in much

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<sup>67</sup>Ibid., Wilson to Wolff, April 25, 1916.

<sup>68</sup>Maclean, Harper and Mullancy v. Yarrow & Co., Ltd., 1916 SMAR 5-8;

<sup>69</sup>Fyfe, op.cit., pp 293-4; Glasgow Herald, May 27, 31, 1916.

<sup>70</sup>On Mackie, see USB, Monthly Report, July 1915, pp.16-17.

For the facts, see Glasgow Herald, June 14, 1916.

doubt. Indeed the assistant manager, Calvert, had acknowledged that the firm had offered the squad jobs since their dismissal. The tribunal therefore awarded the men £3 each.

Perhaps Crush took the decision as a personal humiliation. Or perhaps he felt that the authority of shipyard employers would be gravely harmed as a result. He certainly appeared to have an extremely simple view of the functions of tribunals - that they ought to enforce discipline in his yard in the manner in which he himself would impose a rigorous regime. That this tribunal failed to do so, sufficiently alarmed him to write to Addison at the Ministry of Munitions on the matter that same day.<sup>71</sup> His specific complaints were directed against the fact that the assessors<sup>72</sup> in the case were permitted by Fyfe to "determine the value of the evidence". He had believed that the assessors' task was limited to matters concerning the amount of compensation. Having thus implicitly criticised Fyfe, he also found fault with Lord Dewar's handling of the appeal, arguing that instead of limiting himself to questions of law, the judge,

"... went out of his way to touch on matters of fact, and prejudiced the case on its re-trial by his statement that, 'It is a very serious matter for a workman to be dismissed for misconduct, as these workmen were.'"<sup>73</sup>

For Crush, the "serious matter" was his attempt to expedite munitions output by checking idling and smoking. Instead, he complained, he was,

"... handed over to the Sheriff to be mulcted for £9 without the local officials of the Ministry of Munitions lifting a little finger in defence."

This, moreover, was in sharp contrast to the attitude of the Boilermakers' Society which "threw the whole weight of their great influence" into

<sup>71</sup>LAB 2/63/MT 167/1, op.cit., Crush to Addison, June 14, 1916.

<sup>72</sup>Their identities have not been discovered.

<sup>73</sup>Cf., 1916 SMAR, at p.7.



defending men who had been absent from work for 33-35% of their normal working hours in the previous two months. His parting shot was to attack those employers' assessors, "out of touch with modern shipyard practice", by which was meant, of course, those not adhering to his own blueprint for yard discipline.

On receipt of his letter, the ministry officials mounted an enquiry. The first matter was the criticism of Fyfe. In Payne's judgment,<sup>74</sup>

"... Sheriff Fyfe has shown himself to be one of the most competent, if not in fact the most competent, of the Chairmen of Munitions Tribunals, and I should be surprised to find that the charge of inefficiency which is brought against him, would be generally upheld in Scotland."

He noted that Fyfe was capable of dealing "very severely indeed" with misdemeanants and lecturing them gravely on the necessity for continuous work. As tribunal chairman, he also frequently went to lengths to arrange settlements between employers and their men. It was only in the first hearing of this case, Payne believed, that Fyfe had been a "little unfair" to the men, when he insisted on the 24 hour deadline for lodging complaints. Without using the word, Payne no doubt thought the criticism of Fyfe ironic in the circumstances, given his resolute track record.

In the light of this review, the Ministry of Munitions wrote back to Crush on July 6. The criticism of Fyfe was, inevitably, refuted, the attention of Crush being drawn to the distinction between what constituted evidence (a question of law solely for the legal chairman) and the value of the evidence, on which the chairman was entitled to consult the assessors. As to Dewar's general observation on the seriousness of dismissals for misconduct, Addison, it was conveyed,

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<sup>74</sup> LAB 2/63/MT 167/1, op.cit., Payne to Keenlyside, June 27, 1916, section III of memorandum.

personally considered that the comment was not<sup>75</sup> calculated to prejudice a retrial. Additionally, Crush was informed that the Glasgow local tribunal had recently been reinforced by a considerable number of nominees of the local engineering and shipbuilding federations,<sup>76</sup> so that no further action was necessary in this regard.

The probability is that the Ministry of Munitions thought that Crush had brought about his own difficulties. For it was pointed out that if employers wished to enforce discipline, they could prosecute under the Ordering of Work regulations or could dismiss men with a week's notice. Yarrow's mistake was in failing to prosecute, or in dismissing these men without a week's notice or wages in lieu. Relentless to the end, Crush wrote back.<sup>77</sup> First he pointed out that Sheriff Craigie, newly appointed to the tribunal bench, had just issued a decision contrary to that of Fyfe. Since it arose in an identical case, Crush predicted that such inconsistency was "not conducive to discipline in Clyde Shipyards". Turning next to the matter of assessors, he believed that in spite of the recent additions, the panels were still "indifferently reformed". During a recent hearing,<sup>78</sup> he had sat with a fellow assessor who was, he said, a house plasterer. "He was perfectly honest, but hopelessly devoid of cognate knowledge", opined the worthy shipbuilder. Indeed referring to the Yarrow riveters' case itself, he was clearly outraged

<sup>75</sup>The word "not" was omitted before "calculated". The context clearly shows that this was accidental, however.

<sup>76</sup>There were in fact 46 new names from the engineers and 12 from the shipbuilders. See ibid.

<sup>77</sup>Ibid., Crush to Addison, July 10, 1916. The ministry had contemplated the possibility of an assessor from the Admiralty sitting in cases in which the Admiralty had an interest, but doubted its practicability. See Payne to Keenlyside, op.cit., section IV. Moreover the Admiralty themselves declined to be represented on the tribunals, according to Keenlyside, ibid.

<sup>78</sup>For other hearings involving Crush, see Glasgow Herald, February 9, April 14, 1916.



that the employers' assessor was from the cashiers' office of a fellow shipbuilding firm.<sup>79</sup>

"In no Shipyard on the Clyde or elsewhere, is it usual in the settlement of disputes with the Black Squad to call in the aid of the Cashiers' Office, or to attach the slightest importance to any views they may hold", he claimed.

His demand for the appointment only of "technical men" and for the sheriff to call, on occasion, for the advice of the Admiralty Superintendent of Contract Work, in deciding such cases, certainly harked back to a purer era of the men of "push and go". But just as wars were too important to be left to the generals, so the Ministry of Munitions no doubt concluded that wartime industrial relations were too important to be left to the suggestions of eccentric, autocratic and self-opinionated employers,<sup>80</sup> insensitive to the maintenance, so far as possible, of harmonious relations between trade unions and employers. Three months later, the Clyde Shipbuilders' Association submitted a further list of names of possible panellists to the general tribunal. Crush's name was on the list. He was not appointed.<sup>81</sup>

<sup>79</sup> Perhaps this was David Cameron, Beardmore's accountant at Dalmuir, who featured prominently in the "gun-mounting" department dispute in December 1915. See chapter four (*infra*) for this incident.

<sup>80</sup> But in the case of Crush, evidently not without influence in high places. For Watt, Liberal M.P. for Glasgow, College, raised the matter in Parliament in such a way as to imply that the riveters had been awarded compensation by the tribunal, "in respect to dismissal due to smoking and idling during working hours." For Mackie's condemnation of this character assassination, see his letter in the Glasgow Herald, July 18, 1916.

<sup>81</sup> LAB 2/47/MT 107/1, *op.cit.* This showed a singular lack of gratitude to one who had sent the ministry a copy of the CWC pamphlet, "To All Clyde Workers." See Bev. III, 13, ff. 79-85.

### Conclusion

In truth, it mattered little who were the employer's or workers' representatives on the munitions tribunals. They performed a very minor and singularly inept role in the proceedings. Where the tribunal chairmen were weak, the best that workers might expect from the employee assessors was that any punishment fixed might be less than the chairman would otherwise be inclined to impose; while employers' assessors consoled themselves with the knowledge that, at least till the Amendment Act, the role of assessors was advisory only, with the final decision, whether on fact or law, resting with the chairman. The 1916 Act did of course declare that the chairman was to be guided by the assessors if they were agreed upon the facts in issue. This, however, amounted to no more than a cosmetic adjustment, for matters were usually never that simple.

Where the chairman was a strong personality, such as Fyfe, he frankly had no need of assessors. Assessors, in short, merely symbolised the appeal to corporate unity which underpinned the government's strategy for the munitions sector of the war economy. The concept of an assessor both representing the "interests" of employees or employers and advancing the national interest was always dangerously flawed and contradictory. It is because the assessors in general mutely suppressed their role as representatives of interest groups that conflict between tribunal chairmen and assessors was so rare an occurrence. Class conflict involving worker assessors within the confines of the tribunal was thus left to those who, wearing a different hat for a different occasion, also performed the role of advocates for the defence. To this extent, trade union officials such as Bunton, Brodie, Sharp, Mackie and Coyle, as we shall see, left their imprint on the tribunal in such a convincing manner that the character of the tribunal was shaped by their initiatives. But even their domination of the proceedings, impressive though it was, fell



short of the magisterial sway and aplomb with which Fyfe performed his difficult tasks.

When the time arrived to compile the Official History of the Ministry of Munitions, a disagreement over the drafting of a passage arose between A.J. Jenkinson, of the ministry's historical records section, and Humbert Wolfe, who had been asked to comment on the draft of the section dealing with the enforcement of the Munitions Act.<sup>82</sup>

Jenkinson had highlighted the tribunal controversies in Glasgow in 1915-16, implying that legal proceedings had been a spectacular failure, prompting Wolfe to reply that, on the contrary, Fyfe's general munitions tribunal had been a "conspicuous success". Such a claim, Jenkinson found "somewhat paradoxical", citing to his general editor, G.I.H. Lloyd, the findings of the Balfour-Macassey Commission, and the necessity for the establishment of the Clyde Dilution Commission. Yet in this instance, we are more inclined to accept Wolfe's interpretation, rather than Jenkinson's, though perhaps not with the same degree of lavish praise which Wolfe clearly favoured. We have already hinted at some of the reasoning behind our apparently surprising finding. However, only by taking into consideration the broad sweep of the Tribunal's activities, even extending into the post-Armistice period, can a proper assessment of Fyfe's achievements be reached. Such a comprehensive analysis, which examines Fyfe's adjudications from 1915 till as late as February 1921, is, of course, attempted in this work.

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<sup>82</sup>MUN 5/328/160/R.2, op.cit.

## CHAPTER FOUR

### The Conduct of the Tribunal: Constructive Aggression and

### the Lawyers' Retreat

#### Introduction

At the start of the previous chapter, a brief reference was made to the disorder which accompanied a number of hearings at the tribunal in Glasgow. William Gallacher's view, as we noted, was that the object of the disturbances was to prevent the tribunals from functioning. To test this proposition, we undertake, in the present chapter, an in-depth examination of a half-dozen well documented proceedings before the Glasgow tribunal. In the first instance, we will note that the tumult accompanying the proceedings was not confined solely to those workers spectating at the hearings. For we will discover that both the accused trade unionists themselves and also those representing them before the tribunal, contributed to the rowdiness of the proceedings by conducting themselves in an aggressively insubordinate manner. Moreover, it will be suggested that the tactics thus employed were designed, not to prevent the tribunals from operating, but to secure as favourable an outcome as possible in an otherwise legally hopeless situation. Finally, it will be argued that a crucial element in the struggle against an adverse tribunal judgment was for trade union defendants to seek to debilitate the method which judges invariably employed to maintain control of the proceedings. That judicial method was, simply, to retain control over the content of court room conversation in order to ensure that debate was conducted in the "neutral" categories of legal criteria. At the same time, social or moral



judgments, which might rouse hostile sentiments, would thereby be eschewed. The extent to which the "constructive aggression" of trade unionists and of their representatives was successful in forcing the "lawyer's retreat" had consequences for the continued occupancy of the chairmanship of the tribunals of certain of the Glasgow chairmen, as we shall see in chapter six. But it is undeniable that the tactics informed the conduct of the hearings, much to the chagrin and exasperation of the tribunal chairmen, as we shall also observe. Thus workmen's representatives, whether lay trade unionists, full-time officers, or even solicitors, conducted a fierce and uncompromising campaign of threats, accusations and delaying tactics during the conduct of the hearings. In short, they set out to harry and harass the chairmen, to undermine their authority and to reduce the credibility and dignity of the proceedings. The only self-imposed limit was that at no stage did their representatives refuse to recognise the legitimacy of the court or of its right to try their members. Indeed, during some of the more tumultuous hearings, the men's representatives insisted that if the law had been broken, then it was the employers who had infringed the Act. There was therefore no express repudiation of bourgeois or capitalist law (though some shop stewards, as we shall see, appeared to adopt this rejectionist view during the deportation strike hearings in April 1916). Moreover, it would be wrong to describe the hearings where uproar was prevalent, as chaotic. The disorder of the proceedings generated by the men's representatives seemed in fact to be fairly structured, and directed towards securing what for them would be a tolerable, rather than a punitive, tribunal adjudication. In short, the approach which the workers' representatives appeared to adopt in those cases where passions were already clearly inflamed, as in the Fairfield cases, was to intimidate the chairmen into leniency, perhaps to attempt to force

upon them an arbitral, rather than a judicial function. The tribunal became a forum for the ritual display of aggression rather than for adjudication. Expressions of regret or contrition by guilty workers, which invariably led to light sentences, were the exception rather than the rule. In short, working class attitudes to law were clearly not cowed nor marked by deference.

It is not to be expected that those presiding over juridical fora would accept this treatment with equanimity. For they possessed a subtle weapon with which to "routinise" conflict, by delimiting the boundaries of courtroom discussion. Yet while the analysis of courtroom conversation may illuminate the processes whereby legal authority normally maintains social order during hearings, this control mechanism spectacularly broke down during the tribunal hearings; order suffered as a result; and the chairmen were forced to vacate their traditional domain as judges.

What happened, it will be argued, was as follows. Confronted by controversial cases where the defendants' representatives embarked upon a sustained attempt to undermine the chairmen's authority, the latter sought refuge in their efforts to maintain control and order during the proceedings, by invoking both the authority of official legal procedures and, also, their monopoly positions as chairmen to adjudicate on what evidence was relevant, legitimate and competent. A good example from a minor case (not discussed in detail in the following account) involved the prosecution of four men who had refused to work a "reasonable" amount of overtime. They were complying with a workshop resolution to this effect, passed in order to persuade the employer to attend to particular grievances over wages and conditions. The men's spokesman had told the tribunal that,<sup>1</sup>

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<sup>1</sup>Glasgow Herald, November 25, 1915.



"They had acted honourably as workers standing one by another, and it was their firm conviction that anything they had done had been in the interests of the whole community."

Yet according to the tribunal chairman, James Andrew,<sup>2</sup>

"The Court could not take into consideration the reasons which had influenced respondents in declining to work overtime, because that was outside the purview of the Munitions Act."

Thus by determining what was legally relevant or irrelevant, the judge could structure the proceedings according to his, and not according to the accused's, criteria. Negotiation, in the overwhelming majority of court hearings, would thus be foreclosed. Controversy, if it existed at all, would inform legal, not social, categories, thus precluding consideration of, for example, the reasonableness or otherwise of the dismissal of the two Fairfield shipwrights which had precipitated the strike of 426 fellow-shipwrights. Through the instrumentality of legal criteria of relevance, order in the courtroom was normally maintained on the terms of the legal officials. Before the munitions tribunals, however, these patterns, whereby official legal reality was imposed, frequently broke down, compelling the chairmen to devise new, and ultimately no more successful, tactics. In these endeavours to strike a compromise or a new modus vivendi, the chairmen were more commonly pushed than jumped themselves. As a consequence, the character of the tribunal, as has already been suggested, was transformed dramatically, with the workmen's representatives playing the leading role and forcing the chairmen to follow in their wake. The alternate wielding of stick and carrot by the chairmen thus partly reflected their dilemma in being forced into retreat.

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<sup>2</sup>Ibid.

Theoretically, legal procedures, courtroom verbal exchange and legal language are designed to produce highly specific and definitive rulings on matters which "ordinary" conversation is not expected to achieve. Some writers stress that the court officials engage in drama, ceremony and symbolism with a view, ultimately, to "intimidate, bewilder, oppress, alienate, label or stigmatise" defendants.<sup>3</sup> This legal reality is sharply contrasted with the "common-sense" view of the world, which one might call the primary reality of experience. The latter, assailed by legal routines and other formal procedures, succumbs to the former, which, in the courtroom, assumes dominance in one's social experience. Thus in one study, it is stated that,<sup>4</sup>

"... the staging of magistrates' justice in itself infuses the proceedings with a surrealism which atrophies the defendant's ability to participate in them."

The objective which the creation of specialised legal procedures and modes of argument and discourse in the courtroom seeks to attain is, therefore, the pursuit of social order on those terms which maintain the integrity and authority of court officials. It will be argued that the noticeable failure of legal reality to impose itself unquestioningly on those appearing before the munitions tribunals -an outcome which contrasts strongly with the success of

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<sup>3</sup>J.M. Atkinson and Paul Drew, Order in Court (London: Macmillan, 1980), p.4.

<sup>4</sup>Pat Carlen, "The Staging of Magistrates' Justice", British Journal of Criminology, Vol. 16, 1976, pp 48-55, at p.48; cited in Atkinson and Drew, ibid, p.12 who argue that this assumes that in the "outside world", there exist conventional norms and normal interaction which themselves are unproblematic. In fact, they insist, "normal" interaction will itself be conditioned on specific contexts so that the contrast between courtroom and "outside" interaction may not simply be that between the "normal" and the "alien". See ibid., pp. 15-16.



the modern court system to maintain control - is not simply attributable to the feelings of resentment on the part of skilled workers aware of their strategic importance to the war effort, and whose sense of sacrifice was repaid by their employers and by the local ministry officials, with tribunal prosecutions. This failure of "legal reality" is also due to the rich experience in bargaining which the trade union representatives and workmen themselves had shared in the regulation of industrial relations. The unpopular munitions tribunals, handling collective issues, were seen as yet another forum within which to engage in familiar, if heightened, negotiating processes. A further reason relates to the perception of the tribunals, shared by some of the accused, as a political instrument of repression. It therefore drew a correspondingly political, albeit non-revolutionary, response.

At a more generalised level, however, one may interpret the pattern of events before the Glasgow tribunal as an illustration of the thesis that the attempt of the Ministry of Munitions to regulate industrial labour through a corporatist strategy, which in turn depended on official union cooperation in disciplining its membership, foundered on the rock of "system contradiction". Even the local trade union elites, otherwise despised by the revolutionary shop stewards, recognised that it would be futile, perhaps dangerous, were they not to defend their constituents before the Glasgow tribunal. And this, to their credit, is what they proceeded to <sup>do</sup> with both vigour and resilience. Their surrender to a bureaucratic strategy of incorporation, a strategy which, by grave irony, also led such officials to the tribunals as assessors sitting in adjudication over working class offenders, was never complete, and abject. They were acutely aware of the contradiction for their union and for themselves which a corporatist strategy would in turn pose. Thus their behaviour before the munitions

tribunals, though primarily instrumental, also contained elements of a revolt against state bureaucracy, albeit a revolt which was a pale shadow of that embarked upon by the Clyde shop stewards' movement. The former, however, were intent on a restoration of the status quo ante, which can best be described as collective laissez-faire; the latter, of course, aimed at a more fundamental transformation of society.

Thus, we would argue that the confrontations witnessed before the Glasgow tribunal can be explained in terms of a clash of competing ideologies. On the one hand was the statutorily enshrined corporatist philosophy whose assumptions were an interventionist state imposing its labour policy by legal measures; the pursuit of a single, unified national interest to which all parties were subordinated, and the removal of market freedom in selecting one's employer and negotiating wages and conditions. From all these matters, the pluralist assumption which had traditionally informed trade union conduct in the pre-war period of collective laissez-faire diverged sharply. An abstentionist state, legal autonomy, market mobility and free collective bargaining (all of these at least in theory) were the context within which the local union officials had formerly exercised their functions. Perhaps representatives rather than delegates (so that it was the officials' image of bargaining strategies - invariably a limited and conservative vision - which prevailed), they could only assume the mantle of industrial policemen, under the government's labour strategy, at a risk to their very existence as representatives. Indeed, clearly disdainful of the neat legal categories which stressed rights rather than interests, in the matter of job regulation, they used the tribunals not merely to defend their members, but in an attempt to rehabilitate the voluntarist bargaining spirit which the war legislation had attenuated.



Therefore, within the wider theoretical framework expounded above, the fascinating exchanges between tribunal chairmen and the accused or their representatives, must be seen in the light of the latter's attempts to escape the boundaries of tribunal discourse which legal officialdom wished to impose and maintain in pursuit of order. The verbal struggle which ensued, embodied both the attempt by munitions workers to "capture" the tribunals on their own criteria of relevance and also the desperate attempts by the chairmen to prevent them wresting this control from legal officialdom's hands. It was, indeed, a re-enactment of workshop struggles and is clearly brought out in the following account of the most significant cases.

#### Fairfield: Coppersmiths and Shipwrights

The two major Fairfield prosecutions in 1915, especially that of the shipwrights, have, of course, received extensive coverage in the literature.<sup>5</sup> Though we propose, therefore, to concentrate on the legal proceedings in this chapter, nonetheless, it is relevant to sketch in some of the background to industrial relations within the firm.

Gradually, new light is being cast on the pattern of industrial

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<sup>5</sup>OHMM, Vol. IV, Part II, pp 49-65 for the two Fairfield disputes and the Balfour-Macassey Commission which was set up in the wake of the shipwrights' crisis. See also Wrigley, David Lloyd George and the British Labour Movement, op.cit., pp 134-5; Hinton, The First Shop Stewards' Movement, op.cit., pp 114-7; Gallacher, Revolt on the Clyde, op.cit., pp 63-6; Iain McLean, "The Labour Movement in Clydeside Politics, 1914-1922", Oxford D.Phil, 1971, pp 55-8; ibid., The Legend of Red Clydeside, (Edinburgh: John Donald Publishers, 1983) p.41.

relations among major Glasgow firms both prior to, and during the war.<sup>6</sup> Yet the identification, on the part of employers, of a clear and consistent labour policy, is not easy to pinpoint. Thus within Fairfield, there was no senior company representative as outspoken in his desire for labour regimentation as was William Weir, the managing director of Weir's of Cathcart.<sup>7</sup> It is, in fact, open to debate whether labour relations in the yard were matters to which the Fairfield management had any time directed their attention in the absence of domestic crises.

Indeed, in their account of the Fairfield "rescue" operation in the 1960s, Professor Ken Alexander and C.L. Jenkins remark that,<sup>8</sup>

"Within the old company, labour relations were much neglected - it was an area regarded as peripheral rather than central to the well-being of the company. Effectively, responsibility for labour relations lay with the shipyard manager, who was also responsible for the day-to-day operation of the yard. Pressures of time and events often forced the shipyard manager to deal with matters relating to labour relations in an ad hoc fashion... In a shipyard employing 3000 people it may appear surprising that labour relations were given so little attention, but this was not unusual for the River or the industry."

It is significant, for example, that there is no record of any discussion of the two strikes contained in the directors' minute book for the period, though conceivably discussions took place without resulting in a resolution. Indeed labour relations is almost wholly absent from consideration at this level, even though individual directors such as Alexander Cleghorn and Hugh MacMillan (see infra) were directly involved in these labour disputes.

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<sup>6</sup> The opening up of business archives of employers and of employers' associations in the West of Scotland within the past few years is beginning to rectify this omission. For a recent survey, see Joseph Melling, "Scottish Industrialists and the Changing Character of Class Relations in the Clyde Region, c. 1880-1918", in Tony Dickson (ed.) Capital and Class in Scotland (Edinburgh: John Donald Publishers Ltd., 1982) Ch.2.

<sup>7</sup> McLean (1983), op.cit., p. 28, in his cast of the "Scottish Dilution Play", introduces Weir as "an Aggressive Employer".

<sup>8</sup> K.J.W. Alexander and C.L. Jenkins, Fairfields: A Study of Industrial Change (London: Allen Lane, The Penguin Press, 1970), p.107.



Labour policy was in fact probably viewed by the firm as the responsibility of the three employers' associations, the Scottish Coppersmiths, the Clyde Shipbuilders' Association (CSA) and the North-West Engineering Trades Employers' Association (NWETEA), of which the company was a member; and that these associations merely set standards with the relevant unions, to which Fairfield might give effect. Labour relations as a domestic concern was probably conceived by the firm in terms, simply, of its works rules, laying down punishments for absence, for bad timekeeping, or for "interference or dictation" in relation to others; even to the minute detail of stipulating that,<sup>9</sup>

"Workmen who exceed 7 minutes per day in lavatory will be fined  $\frac{1}{4}$  of an hour or more, according to time spent."

Other information in these rules referred, as one might expect, to methods and time of payment, hours of work, accidents, tickets (for checking in and out of the works), apprentices and young persons.<sup>10</sup>

This "formal" framework for labour relations was, it appears, simply incapable of handling the multitude of claims which came before the firm, particularly where unofficial trade union action was being undertaken. Thus as trouble arose, the firm appeared to lurch from one crisis to another, unable to command authority. The lack of an informal but practised method of proceeding which could authoritatively settle a question to the satisfaction of each side was sorely felt. Thus the resolution of disputes through the agency of the foreman, where it did occur, was very much an ad hoc affair. Indeed, by refusing to recognise that industrial relations was a matter not solely for the local employers' associations and by its pretence

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<sup>9</sup>Strathclyde Regional Archives, UCS 2/55/1, "Fairfield Works Rules, 1912"; reproduced by permission.

<sup>10</sup>Ibid.

that any dispute within the firm which did not involve the district as a whole, was one between the foreman and the individual workmen, the firm lacked the institutional machinery to deal efficiently and effectively with the sorts of dispute which the Munitions Act was about to generate.<sup>11</sup>

In exploring more direct causes of the Fairfield disputes which arose, Melling has noted that tensions over the unionisation of particular foremen and over manning questions surfaced in a copper-smiths' dispute at Fairfield in 1912, a confrontation which "serves as a prologue to the serious troubles of 1915 at the Govan yard."<sup>12</sup> The pre-war legacy, as we shall see, was perhaps more significant in the shipwrights' case. Nonetheless, the continuation of pre-war grievances into a war period, infiltrated by the threat of the Munitions Act is a feature informing much trade union criticism of an act which is clearly seen to possess partisan qualities. Indeed not only did trade unionists voice their condemnation, as did the Federation of Engineering and Shipbuilding Trades (FEST) for the Clyde District which,<sup>13</sup>

"... is convinced that the Act, as it has been used by the Employers, has been to further their own interests instead of to expedite munitions and armaments for the nation."

But even munitions tribunal chairmen, such as Cmdr. Gibson, felt that employers "were utilising the Munitions Act for their own personal advantage."<sup>14</sup>

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<sup>11</sup> For general observations explaining the rise of shop steward activity in terms of institutional lacunae, see John Lovell, British Trade Unions, 1875-1933 (London: Macmillan, 1977), p. 43

<sup>12</sup> Joseph Melling, "Non-Commissioned Officers': British Employers and their Supervisory Workers, 1880-1920", Social History, Vol. 5, 1980, pp 183-221, at p. 207, In Melling's account, foreman-worker relations are closely identified with the craft trades, to the neglect of the unskilled.

<sup>13</sup> AIMS, Monthly Report, September 1915, p. 174.

<sup>14</sup> Ibid., January 1916, p. 250.



Apart from the criticisms of the yard expressed by both Christopher Addison and the Admiralty Captain-Superintendent for the Clyde district, which McLean has cited,<sup>15</sup> it may also be observed, in anticipation of our future discussion, that during the coppersmiths' tribunal hearing, the strikers' criticisms of the inability of the Fairfield management to maintain the copper shops in full production, was believed by one Ministry of Munitions official to have persuaded the tribunal chairman to impose particularly lenient fines.<sup>16</sup>

Yet though managerial failings were thus exposed, factors such as the shortage of essential materials, beyond the control of management, may have contributed to this slackness. Fairfield's output of ships in 1915-1916 in fact compared favourably with yards of similar size such as Beardmore's at Dalmuir, where progress on the completion of ships was retarded until its labour difficulties were resolved by the end of 1916.<sup>17</sup> The company's board of directors certainly expressed concern at repeated failures to deliver ships on time, and resolved to "instruct that the works managers be specially informed of this minute".<sup>18</sup> This may of course have been a simple case of buck-passing which might conveniently be hidden from view, as controversial tribunal hearings, such as the coppersmiths' prosecution, engaged public attention. Nonetheless, the charge of inefficiency levelled against Fairfield is perhaps more significant for the context in which it was laid than for the substance which it may, or may not, have embodied.

<sup>15</sup>McLean (1983), *op.cit.*, p.41.

<sup>16</sup>MUN 5/349/341/2, "Fairfield Strikers: Memorandum by Mrs Mair".

<sup>17</sup>Mrs Jessie Mair was Beveridge's assistant.

<sup>18</sup>John R. Hume and Michael S. Moss, Beardmore: The History of a Scottish Industrial Giant (London: Heinemann, 1979) pp 132-6.

<sup>18</sup>UCS2/1/4, Fairfield S. & E. Co. Ltd, Minute Book No. 4, December 15, 1915.

### The Coppersmiths

Against this background, we may now turn to the confrontations themselves which generated the dramatic scenes at the tribunal. The first of these episodes was the coppersmiths' dispute. Early in July 1915, Fairfield had found themselves short of coppersmiths in the yard. They then approached the Glasgow and West of Scotland Armaments Output Committee with a request that the committee approve the use of plumbers for work usually performed by coppersmiths. The request was granted on July 14, so long as the Coppersmiths' district secretary, Alexander Turnbull (later to be appointed a munitions tribunal assessor) was informed of the arrangements. In fact, Turnbull was hesitant to approve, whereupon the management informed him that since the firm were by now controlled, they were going to introduce the change in working arrangements anyway, thus demonstrating clearly their intention of taking advantage of the Act. The Glasgow Fair holiday had then intervened and nothing developed until 7.20 in the morning of Tuesday July 27 when a deputation of three coppersmiths went to see the works manager and told him that though they did not object to plumbers doing their work on board ship, they would walk out if plumbers were introduced into the copper shop. The coppersmiths then held a mass meeting and walked out after breakfast.<sup>19</sup>

Summoned to the munitions tribunal, 28 strikers were tried on August 2. The extensive account of the trial in the Glasgow Herald<sup>20</sup> reveals a fascinating exchange between the men's representatives and the tribunal chairman, Professor Gloag. The two officials of the National Society of Coppersmiths, Robert Turnbull, its president, and his namesake, Alexander Turnbull, its district secretary, set about

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<sup>19</sup>OHMM, Vol. IV, Part II, p. 49.

<sup>20</sup>Glasgow Herald, August 3, 1915.



the task of weakening the legitimacy and authority of the tribunal to try their members; while Professor Gloag just as stoutly concentrated his efforts on seeking an answer to the straightforward question whether the men did indeed go on strike contrary to the Act.

A foretaste of these competing perspectives - between legal and social reality - is even to be found in the exchanges over the selection of the tribunal assessors for the hearing. Thus Robert Turnbull objected to the presence as employers' assessor, of James Dalrymple, the general manager of Glasgow Corporation Tramways Department,<sup>21</sup> as he was "not an employer in any sense of the word", a remark which drew applause from the court. Perhaps Turnbull was under the impression that an employer from the munitions trades would have been a more understanding assessor. More likely, Dalrymple was so well known to the Clydeside labour movement as the best recruiting-sergeant in the district and who spared no effort - and no employee - to intimidate his staff into enlisting. No tribunal could be "impartial" with the likes of Dalrymple as one of the assessors, it was implied. Turnbull also complained, as a preliminary point, that his union had had no opportunity to make representations to the Board of Trade or to any other authority (with a view, presumably, to conciliation or arbitration). But his request for a discontinuance of the proceedings was refused.

Yet this was not the end of the preliminary skirmishes preceding the actual trial. For one of the strikers, seeking to prolong the campaign against Dalrymple, rose up and announced, "I am one of the strikers and I make an objection to the empanelling of the Court", to which Gloag replied, "I think you cannot, after pleading, object

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<sup>21</sup>For Dalrymple, see chapter three (supra), note 55.

to the constitution of the Court". However, insisting that no opportunity to object had been afforded him, the coppersmith finally declared, before sitting down, "Well, we will be tried under protest, Mr. Chairman". He resumed his place, but he had succeeded in making his point, and already the signs were clear that here was no ordinary criminal trial, marked by pomp and solemnity, but the determined pursuit of obstructive, if not quite destructive, tactics which clearly sought to undermine the legitimacy of the hearing.

Eventually, the substantive proceedings got under way, with Alexander Cleghorn, director and engineering manager of the company, giving evidence that the armaments output committee had approved the use of plumbers on coppersmiths' work. He added that he had informed Alexander Turnbull of this, and that he "had every intention of taking advantage of the provisions of the [Munitions] Act", despite Turnbull's objection. Cleghorn had then told his works manager to expect trouble, though he had not expected the coppersmiths to take the stand they had done.

At this point, the lawyer's rationality expressed itself in the unsubtle question which Gloag addressed to the witness, that is, "whether these men, as a matter of fact, came out on strike". The following dialogue is instructive.

TURNBULL (interrupting Gloag's question): "Because of great provocation and due solely to the management of Fairfield."

GLOAG: "We want to know if they struck".

TURNBULL: "Yes they struck because of the Fairfield management violating the Act".

GLOAG: "It does not matter for what cause. Did they strike?"

TURNBULL: "But we are trying to place the facts that led up to the cause of the strike".

GLOAG: "But the men pleaded not guilty".

TURNBULL: "Well, even a murderer is tried".



It is clear that Gloag was firmly stuck in the lawyer's groove, in that the salient issue, as he understood it, was whether an unlawful strike had occurred. On the other hand, Turnbull was doggedly insisting that matters were not as simple, and that questions of provocation were just as vital, even if they failed to correspond to the lawyers' neat conception of relevance. It is suggested, however, that Turnbull's motive was not to coerce Gloag, the judge, into the different role of an arbiter who attempts to "resolve" difficulties diplomatically by the application of "common sense" in such a way that both parties can derive satisfaction from the outcome. Given the novelty of the munitions tribunal and given the pre-war voluntarist tradition in industrial relations, such an interpretation might well have been attractive. It seems unlikely, however, More plausible is the view that Turnbull was both probing for weaknesses in the staid and stoic posture characteristic of lawyers, with a view to weakening Gloag's resolve; and he was also engaging in a spot of plea bargaining in order to minimise the punishment which he had justifiable fear would be imposed by the tribunal. Indeed, far from refusing to recognise the legitimacy of the tribunal to try breaches of the Act, the trade union officials, as we have already seen, had demanded an alternative assessor to Dalrymple. Furthermore, Alexander Turnbull was not averse to pointing out an infringement of the Act by his opponents, Fairfield. Thus the firm, he alleged, had given the men no opportunity for consultation before the changes were implemented. Indeed, he insisted that the men were quite willing to relax demarcation rules in connection with the plumbers and other trades. However, the "promiscuous" employment of plumbers alongside coppersmiths, he explained, threatened to prejudice the latter's position at the end of the war.

This plea bargaining tactic seemed, in fact, to be succeeding.

For Gloag, perhaps chastened by Turnbull's verbal onslaught, suggested that if the men returned to work and referred the problem to the Board of Trade, the amount of the fine might be modified. Turnbull, however, was, it seems, no novice in the delicate art of defending a formally hopeless position. Thus it was not a matter simply for the strikers, he insisted, but for the whole trade and "threats of penalties and such as that would not deter the trade in the slightest". Indeed, the mood of a mass meeting to be held that night would turn on the outcome of the tribunal hearing, he hinted darkly. Again, of course, this should be understood as another card played in the negotiating game, not to compel the tribunal to acquit the strikers (for they had scarcely denied their actions, and legal rationality would forbid such absolution), nor to ensure a satisfactory "arbitral" settlement, but to force down the tariff of punishment to its lowest point. For sentencing was a matter within the tribunal's discretion (Gloag was, indeed, particularly susceptible to pressure exerted on him to impose a lenient sentence, and the coppersmiths' case is merely one example illustrating his infirmity of purpose).

Thus over lunch, the men met and resolved that there should be a return to work if the status quo were maintained and if the Board of Trade were brought in to consider the whole question. This was to include the men's allegation that Fairfield itself had breached the Act in making the change without offering an opportunity for consultation with the men.<sup>22</sup> Moreover, since they had already been

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<sup>22</sup>On consultation, the Act provided (Sched. II, para. 7) that "Due notice shall be given to the workmen concerned wherever practicable of any changes of working conditions which it is desired to introduce as a result of the establishment becoming a controlled establishment, and opportunity for local consultation with workmen or their representatives shall be given if desired". Obviously an employer could simply plead that it was not "practicable" in the circumstances to give notice of changes which could form the subject of consultations.



warned by the chairman (supra) that they would still be liable to a modified penalty for striking,<sup>23</sup> they were therefore clearly prepared to accept the legitimacy of the tribunal's sanction. However, it was Fairfield's response to the proposal which triggered off further disorder in the tribunal.

Thus the firm announced that they had agreed to restore the status quo ante, and to involve the Board of Trade, but only in respect to the coppershops, not on the ships themselves. However, this provoked a hostile reaction on the part of the men congregated in the hall where the hearing was being conducted, and several strikers then stood up and addressed the court. Among them was Owen Rodgers who, as we saw in chapter one, had protested his loyalty to the war effort. Indeed, he added, rather than criticise the workers, the tribunal should address itself to the faults of management which were transparently obvious. Thus if 80 coppersmiths were brought into the yard that night, there would be only ten fires in progress to service all their needs. Moreover, there was much sub-contracting to six or seven different shops, but men at Fairfield were standing idle. Then the unfortunate Dalrymple was again singled out for attention.

"I want to know if Mr. Dalrymple, the tramways manager," asked Rodgers, "has the authority of the ratepayers of Glasgow, to leave off his own work in order to try other men for being off their work."

Amid the commotion, Alexander Turnbull asked what were the penalties if the men refused to return to work; and having elicited the reply that the fines were £5 a day while the men were out (a reply which drew roars of laughter from the strikers), he then announced that since the union regarded their action as "quite legal",

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<sup>23</sup>OHMM, Vol. IV, Part II, p.49.

the union was going to pay their fines. No doubt competing conceptions of legality might have existed but the ultimate acceptance by the union of the tribunal's (albeit qualified)

legitimacy, suggests that by "legal", the union meant "justifiable".<sup>24</sup>

In the end, as is well known, Gloag imposed fines of just 2/6d on each of the accused,<sup>25</sup> a manifestly derisory amount which can only be explained in terms of the success of Turnbull's strategy to intimidate the tribunal and to cast Fairfield in the poorest possible light. As a deterrent to other potential strikers, Gloag's tribunal was a paper tiger.

Comments in the press after the hearing were predictably diverse. According to the Herald,<sup>26</sup> the case "looks like an ordinary demarcation dispute ending in the usual resort to the impartially partial authority", that is, to the Board of Trade. But it had a deeper significance for the trade union movement. For,

"The case has shown how unfair the Munitions Act is to the Unions and has revealed a serious flaw".

The employers' power to change rules without consultation had previously been pointed out and trade union protests would have no effect. Only direct strike action, here supported by a union which was not a signatory to the Treasury Agreement, held any prospect of success. The coppersmiths' strike was therefore a sign of the spirit of trade unionism, and a strike for liberty. The employers' intentions of crippling organised labour, which Arthur Henderson's posture on the National Advisory Committee was encouraging, were forcefully exposed by this case. Yet the paper's demand for corrective steps was somewhat lukewarm.

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<sup>24</sup> But whether justice and law are synonymous is one of the oldest chestnuts in the history of jurisprudence.

<sup>25</sup> According to Gloag, "justice" would be met by a 2/6d fine, "in view of the men's efforts to return to work". See The Times, August 3, 1915.

<sup>26</sup> Herald, August 7, 1915.



"We maintain", it said,<sup>27</sup> "that no rule should be abrogated till the Unions have stated their case, and until that case has been listened to with respect. The Munitions Act must be amended so as to give the Unions this opportunity".

Perhaps the Herald always was cautious.

Its partial namesake (though hardly its political stablemate), the Glasgow Herald, devoted a lengthy editorial inquest to the case.<sup>28</sup> The strike was, predictably, condemned in round terms.

"In time of War, the strike of war workers is a crime against the State, a knife driven between the shoulder blades of the men on sea and land who are fighting their country's battles."

The impact of the tribunal hearing on the credibility of the Act was a major cause for concern. Thus,<sup>29</sup>

"The effect of these proceedings, especially when we take into consideration the almost truculently self-righteous and jauntily disrespectful attitude of the men and their leaders towards the Court, is to bring the Munitions Act into open contempt".

What was the point of fining the men a mere 2/6d? Either one should rely on persuasion, as Lloyd George had told the House some days earlier, or apply the "full penalty", a step which ought to include the blacklist, "until such time as they, and their Union, showed their conviction of sin".

There was certainly little point in negotiating with such people as Owen Rodgers, the remonstrative and slighted striker. "This is the type of man", moralised the editorial, "upon whom argument or persuasion is wholly wasted". If Lloyd George were not prepared "to make his authority respected", then martial law was the only answer.. "It is brought appreciably nearer by this sorry farce."<sup>30</sup>

<sup>27</sup>Ibid.

<sup>28</sup>Glasgow Herald, August 3, 1915.

<sup>29</sup>Ibid. Cf., Woman's Dreadnought, August 14, 1915, which referred to the 'futility' of the Munitions Act, following hard on the heels of the débâcle over the South Wales miners' strike.

<sup>30</sup>Glasgow Herald, August 3, 1915.

In fact, at a meeting with Lloyd George some days after the hearing, the Shipbuilding Employers' Federation, through their president Fred Henderson (of the Glasgow shipbuilding and engineering company, D. & W. Henderson & Co. Ltd) saw the need for a public prosecutor in all cases to press home the serious view the state took of strike action and to ensure a commensurate penalty was secured. Lloyd George fielded the suggestion by talking in terms of "suitable cases ... where we could make sure we could make a real example".<sup>31</sup> The Fairfield shipwrights' case, as we shall see shortly, was surely designed to be that very example.

The Official History of the Ministry of Munitions<sup>32</sup> claims that the motive of the coppersmiths in striking was obscure, in that the company, contrary to the men's allegation, did offer consultation before implementing the change. Moreover, claims the Official History, the approval of the armaments output committee illustrated that the men's union was prepared to consider favourably the suspension of demarcation rules between plumbers and coppersmiths. Indeed, they were, as we saw previously, though not in the coppershops themselves. But the approval of the committee was hardly decisive, given that its membership included trade union officials on Clydeside such as Sam Bunton and William Brodie of the ASE and W.G. Sharp of the Boilermakers, all of them workers' assessors on the tribunals, and who, it might charitably be said, did not all command universal admiration within the Clyde labour movement. Indeed, the committee had already expired by the time of the tribunal hearing on August 2, killed off by Lloyd George's drive to centralise labour administration. The Ministry historians clearly regretted its passing, believing that its decentralised structure had offered the best hope on Clydeside

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<sup>31</sup>MUN5/48/300/9, "Minutes of Conference with Shipbuilding Employers' Federation. The Application of the Munitions Act etc...", August 12, 1915.  
<sup>32</sup>OHMM, Vol. IV, Part II, pp. 45-7.



for a smooth acceleration of munitions output.<sup>33</sup> Such a view does possess a certain degree of merit, though whether the historians of the Ministry of Munitions appreciated fully the ambiguous relationship between the rank-and-file and the local trade union officials which might put in jeopardy the attainment of improved munitions production, remains an open question.

Yet the Ministry historians were surely right in their assessment of the coppersmiths' strike. The Glasgow Herald may well have considered that a striking coppersmith was a "type of man upon whom argument or persuasion is wholly wasted" (supra), but as the Official History pointed out,<sup>34</sup>

"Yet the strike cannot be regarded simply as an act of unreason. The cause is probably to be found in the men's resentment at the firm's declaration of their intention to enforce the change by means of the Munitions Act, and the manner in which the declaration was made."

Thus, the threatened use of the Act was the tripwire which set off an instantaneous reaction, and a measure designed to restrain strikes was in fact seen to be provoking them.

The coppersmiths' strike and subsequent tribunal hearing is therefore an instructive episode for the sociologist and historian of law, as well as for labour historians. Hardly a "trivial" dispute (as McLean asserts)<sup>35</sup> it reflected a prime concern by skilled men with the maintenance of craft barriers.

<sup>33</sup>The irrelevance of the committee is perhaps reinforced by the fact that the Admiralty overseer, on the Clyde (presumably Barttelot) had approached Fairfield direct in August for a list of cases in which different trades could interchange. The list was circulated to all members of the CSA who were further instructed as to their rights in the matter under the Munitions Act, and as to the procedure to be observed before any interchange took place. See CSA, Minute Book

<sup>34</sup>No. 9, August 26, 1915.

<sup>35</sup>OHMM, Vol. IV, Part II, p. 50.

<sup>35</sup>McLean (1983), op.cit., p.41.

"The coppersmiths", recognised the Glasgow Herald<sup>36</sup> "desire to keep all the work available to their trade just as do doctors, ministers and lawyers."

But the manner in which the tribunal hearing was conducted reveals not an outright rejection by the craftsmen of bourgeois legality, for the coppersmiths were no revolutionaries. They did, in fact, acknowledge the tribunal's legitimacy, even going as far (as we have seen) as to complain of Fairfield's alleged infringement of the Act - though, given the choice, they would no doubt have told Lloyd George (or the chairman) where he could put his tribunal. Yet the uproar, the challenge to Dalrymple,<sup>37</sup> the complaint of inefficiency on the part of the management, even the "incredulous" laughter by the strikers when told that fines of £5 for each day lost through the strike could be imposed, does not imply, as Hinton suggests, that<sup>38</sup>

"... they found it extremely difficult to grasp the full import of compulsory arbitration and the illegality of strikes".

It is more convincing to believe that they were simply tailoring their tactics to the circumstances. They were, in fact, subtly negotiating with the tribunal, not according to any pre-determined plan, admittedly; but by putting pressure on the chairman, they were trusting that a new tribunal chairman, confronted with a new and strange jurisdiction to be exercised under extraordinary circumstances, would accept, or even be bullied into, the intense atmosphere of negotiating brinkmanship and plea bargaining. As we argued earlier, this tactic succeeded and the men undoubtedly felt that they had escaped lightly; indeed, that they had achieved victory, moral or otherwise. For had not one of the strikers jumped up at the hearing and, pointing to Cleghorn, proclaimed, "It is we who are trying you!"<sup>39</sup>

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<sup>36</sup>Glasgow Herald, August 3, 1915.

<sup>37</sup>The other assessor was John Thomson, general secretary of the Associated Blacksmiths.

<sup>38</sup>Hinton, op.cit., p. 114.

<sup>39</sup>MUN 5/48/300/9, op.cit. Fred Henderson, president of the SEF, was most offended, telling Lloyd George, "He was one of the principals of the firm. That is not very nice."



One of the most fascinating questions presently pre-occupying social historians is the issue of working class attitudes to law. The evidence from the coppersmiths' episode suggests a strong propensity on the part of trade unionists summoned as a group not to be cowed by the reputation of the law as a dignified institution. If this fell far short of a challenge to the legitimacy of the state, nonetheless, the accused, with tenacious resolve, were prepared to undermine the authority of the tribunal; to show scant respect for the status of the tribunal chairman, to haggle and to harass; in short, to resist authority by verbal abuse. But there was no refusal to be tried by, for example, turning their backs to the court and refusing to plead, as Irish revolutionaries might do. For their approach was pragmatic, multi-faceted and opportunist. They would use the law to advance their own interests, and ridicule the law's agents if the same objective could be gained by such steps. Without wholly transforming the tribunal into an arbitration panel discussing grievances (instead of adjudicating upon them), they were able to manipulate the tribunal chairman into compromising his position far more effectively than if a less hostile, and more contrite, attitude to the changes had been adopted by them. Thus munitions tribunal hearings might sometimes oscillate between, on the one hand, stereotyped courts of law dispensing summary "justice" and, on the other, joint negotiating committees seeking to resolve "problems" of industrial relations. Features of both these models were to be found displayed in tribunal practice as it alternately tried the stick and the carrot (as, indeed, up to a point, did government labour policy in general). The coppersmiths' tactics corresponded to this image of the tribunal as a hybrid institution. They tried negotiation and they accepted, in the final analysis, the tribunal's tattered authority to fine them a paltry sum. Thus it is this

ultimately pragmatic approach to tribunal proceedings, whereby disruption was combined with instrumentalism, which characterised the more notable proceedings in Glasgow in 1915-16.<sup>40</sup> Indeed, as we shall see in chapter five, the coppersmiths themselves subsequently attempted to invoke the Act in order to bring to a head their grievances over the activities of the plumbers. Thus the positive side of a restrictive legal code might usefully be invoked to advantage.

### The Shipwrights

Even more than the coppersmiths' case, that of the Fairfield shipwrights gave the impetus to change in the "nasty, brutish and short" history of the Munitions Act. Here, indeed, was an incident, which undeniably justifies the description "trivial",<sup>41</sup> so much so that the detailed events within the yard, leading up to the tribunal prosecution, do not merit more than the briefest recitation here, even though their ramifications extended to Parliament; rank-and-file organisation was mobilised on an extensive footing; and trade unions on Clydeside were, unusually, drawn closer together.

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<sup>40</sup> After the hearing, most of the strikers returned to work the following day. See Glasgow Herald, August 4, 1915. Some ten days later, Sheriff A.O.M. Mackenzie sitting as arbiter, ruled against the men's complaint, leaving them exposed once more to the encroachment of the plumbers in the copper shop. See OHMM, Vol. IV, Part II, p.49. No report of the arbitration is cited in the Labour Gazette despite the obvious importance of the case. Perhaps such a mention would have reminded readers of the embarrassing discord at the tribunal. According to the employers' newspaper, however, the outcome had had a "most salutary effect on the working relationship of employed and employers and of one branch of artisans to another."

See the Shipbuilder, Vol. 13, October 1915, pp 169-170.  
<sup>41</sup> McLean (1971) op.cit., p. 55; ibid (1983), p.41. There is no mention of the dispute in the recently published history of the Shipwrights' Union. See David Dougan, The Shipwrights (Newcastle: Frank Graham, 1975). The strike, of course, was unofficial and condemned by the union executive.



Thus, the potted version of events<sup>42</sup> reveals that two shipwrights singled out by a manager for loitering on board a ship, were handed their cards and money together with pass-out checks on which were written, "not attending to work". As is well known, these were taken by the men as leaving certificates which they would require to show to prospective new employers. After a dinner hour meeting of shipwrights, H.M. MacMillan, the shipyard director,<sup>43</sup> agreed to remove the offending words "under protest", but refused to reinstate the two dismissed shipwrights, Andrew White and Hugh Walker. In response, 426 shipwrights took industrial action, the Ministry of Munitions was informed the following day, and a week later, 26 of the strikers, mostly shop stewards who were considered to be the ringleaders, were prosecuted.

According to the historians of the Ministry of Munitions, the men were impulsively spoiling for a fight over the Munitions Act.

"But it must be remembered", they wrote,<sup>44</sup> "that these men on the Clyde are not cool and calculating, but impulsive and swayed by sentiment ... The threat to strike ... can only be explained as the result of a temper eager to provoke a conflict on the flimsiest pretext and with suspicion against every disciplinary action of the management as a tyrannical exercise of power under the cover of the Munitions Act."

Of course the perceived revival of the detested discharge note system abolished in 1912 accounts for the bitterness of the men's response, even if their fears probably lacked substance. But surely it was the management, insulted by the coppersmiths' fiasco, who were spoiling for a fight over the Munitions Act? We may recall the meeting of the SEF with Lloyd George on August 12 where the right opportunity to strike a blow at those creating unrest and to vindicate

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<sup>42</sup> OHMM, Vol. IV, Part II, pp 51-2; Glasgow Herald, September 4, 1915 for the full details.

<sup>43</sup> It was MacMillan who was generally the link between Fairfield and the ministry and Admiralty in respect to labour matters. See note 33 (supra).

<sup>44</sup> OHMM, Vol. IV, Part II, p.52.

the Act was being debated.<sup>45</sup> What could be more appropriate an opportunity than an apparently irrational strike of skilled craftsmen on Clydeside, whose skills were in great demand, where the management were portrayed as willing to offer significant concessions and where the men at the centre of the dispute were found in a compromising situation vis-à-vis the work they were employed to do?

Thus, as the Official History, undoubtedly quoting from departmental papers, observed,<sup>46</sup>

"Drastic action was necessary, though it might involve a general stoppage. But determined repression (it was thought) would go far to kill the unrest on the Clyde."

This of course was precisely the view of Beveridge and his immediate colleagues.<sup>47</sup> The Fairfield shipwrights' case was to be the showdown.

The trial itself, which took place on September 3,<sup>48</sup> fell neatly into two halves. In the first period, proceedings were frequently punctuated by interruptions from the audience. Thus they roared with laughter at management's suggestion that the endorsements on the pass-out checks would not have prejudiced the chances for further employment of the dismissed shipwrights. In another verbal skirmish, the solicitor representing the strikers attempted to poke fun at the prosecutor's line of questioning of a shop steward,<sup>49</sup> as the following dialogue illustrates.

PROSECUTOR: "Did you understand that you were servants of the Government just as much as soldiers?"

SHOP STEWARD: "No".

<sup>45</sup>MUN5/48/300/9, op.cit.

<sup>46</sup>OHMM, Vol. IV, Part II, p.52.

<sup>47</sup>José Harris, William Beveridge: A Biography (Oxford: Clarendon Press, 1977). pp 212-3.

<sup>48</sup>Glasgow Herald, September 4, 1915, for an extensive account of the trial. The assessors were Robert Baird, secretary of the Coalowners' Association and Sam Bunton of the ASE. The prosecutor was J. Turner MacFarlane, the Ministry of Munitions reports officer (and a qualified solicitor). The accused retained J. Geoffrey Hunter, a local solicitor, to defend them.

<sup>49</sup>Fyfe was on the bench.

This was Charles MacPherson, a lay official of the union, and one of those eventually imprisoned.



PROSECUTOR: "Then you knew nothing of the existence of an Act which prohibits strikes?"

SHOP STEWARD: "We had heard about it in a vague sort of way."

DEFENCE SOLICITOR: "As a matter of fact, you have been so busy working that you have not had time to read the Munitions Act."

Nonetheless, given the irrefutable fact that an unlawful strike had occurred, the men's representative faced a difficult task in exculpating his clients. Certainly he did not engage in an aggressive challenge to the prosecution. For, unlike his fellow solicitor, Rosslyn Mitchell, who featured in the deportation strike prosecutions (infra), he probably had no strong ties with the labour movement which might inspire him to more unorthodox tactics. Instead, he stressed the extenuating circumstances, in that some of the men had been working from 110 to 120 hours. Indeed, the shipwrights, he suggested, were "not so much on strike as abstaining from work" until the confusion over the dismissed men had been sorted out. As he warned in his concluding remarks,

"... if at this time of crisis every smart under-manager was to go out of his way to dismiss men for every trifling fault, then there would be nothing but trouble in labour circles."

Thus he cleverly ended by pointing the finger at the Fairfield management which had, once again, he implied, displayed their ineptness. Thus ended the first half of the proceedings.

Sheriff Fyfe now entered the centre of the stage in this drama and, commencing gently, began to excel in the rhetoric of his profession. First he remarked that his was a special tribunal wherein there were no detailed rules of procedure. He had therefore allowed considerable latitude for inquiry into the circumstances giving rise to the strike (Gloag, in the coppersmiths' case, had had this aspect forced upon him). A great deal of evidence had been presented to demonstrate that the two shipwrights, White and Walker, were

competent and had given long service to the firm.

"He believed that, but their personal character was not a factor in the case at all. They were not being tried for any personal misdemeanour. What they were charged with was that in concert with others, they went on strike because a difference arose between the shipwrights in Fairfield and the management. And this was contrary to the Act. They were not concerned with whether or not the dismissal of these two men was reasonable or not. That was not relevant to the present complaint. The only thing which was relevant was the fact that the shipwrights came out on strike because the management refused to reinstate two men. Whether they should be reinstated was a question which was not referred to the Board of Trade under section 2 of the Act, and the strike in connection with that matter was therefore illegal. No-one could pretend ignorance of the Act of Parliament which expressly forbade strikes during the period of war. Reasons for going on strike matter nothing under this Act of Parliament. Men might have a grievance or they might not. The tribunal had nothing to do with that. Like everybody else in this country, the accused were subject to the special war laws. They were, in their workshop, as much bound to obey orders as the soldier in the field. This statute was their commanding officer and its emphatic command to them was "thou shalt not strike". They had deliberately disobeyed this command, and they must take the consequences."

The striking feature of this lengthy passage is of course the calculated manner in which Sheriff Fyfe carefully skirted around the merits of the dispute. He had no intention of becoming embroiled in a heated debate on the reasonableness or otherwise of the two men's dismissal or whether or not the Board of Trade would have ordered a reinstatement. He knew that once he entertained such questions in his decision, he would find himself in dangerous waters. Therefore, his technique of structuring the issue around the narrower question of whether the accused had struck illegally in breach of the Munitions Act was a mechanism designed to ensure that any concluding references were channelled along his terms of reference. The criteria of relevance were legal, not social. To the extent that he retained control over the structure and content of court room dialogue, he could, accordingly, hope to maintain social control over the proceedings. For in matters of legal content, he



was, of course, supreme. He did in fact achieve his objective subtly and, indeed, impressively. Thus by allowing scope for initial discussion of the background to the case, he ensured that the men's perspective was at least ventilated. But at the end of this long  $2\frac{1}{2}$  hour hearing, Fyfe's forceful personality and domineering presence enabled him to convey an uncompromising message with due gravity and solemnity.

Lecturing the accused on the predictable theme that to strike in wartime was a crime against the nation and against their comrades in the trenches, he concluded by imposing fines of £10 each on the 15 who had pleaded guilty and on the two shipwrights who had denied the charge but who had been convicted on the evidence.<sup>50</sup> Twenty-one days were allowed for payment, failing which the alternative was 30 days in prison, an announcement which, for the last time during this prolonged hearing, was received with hoots of laughter by the spectators.<sup>51</sup>

Fyfe's speech was indeed a striking display of an inflexibly legalistic approach to industrial relations problems. One suspects, however, that he was well aware that he was employing a particularly blunt instrument unsuited, normally, to the frequently complex and emotive issues which constituted the industrial relations landscape. Indeed there is little doubt that he was expected by the Ministry of Munitions to launch a determined judicial effort to stamp out industrial disorder on Clydeside and that he responded as desired by the ministry. Clearly a thoughtful tactician, he diplomatically paid lip-service, initially, to an exchange on the causes of the strike,

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<sup>50</sup> The case against a further nine accused, including three Canadians, was withdrawn.

<sup>51</sup> Those found guilty included John Arbuthnot, Patrick Brogan, Hugh Coulter, David Fleming, Donald Fraser, Robert Harper, John Hemphins, Alexander Houston, Thomas Houston, Albert Knight, George Lang, Norman McLeod, Charles MacPherson, Peter Stirling, John Tait and John Turner. Virtually all of them lived in Govan. See Glasgow Herald, September 4, 1915.

but then called an immediate halt to this diversion, and gambled on a strictly legal, punitive approach. Thus, adopting the lawyer's technique to control the shape of court discourse, his speech stressed that relevance was a judicially constructed, not a 'socially' constructed, concept; and he was determined that his concept was to prevail. This was not, perhaps, because as a lawyer he had been trained to conceive of relevance in a particular way, but because, tactically, after the coppersmiths' affair, it probably seemed to offer the best prospect for success in the sense both of maintaining decorum and respect for law, and of deterring others from engaging in similar conduct.

Thus the severe performance of a hardened sheriff adjudicating upon a ministry prosecution was in stark contrast with the previous disastrous experience of a private mass prosecution during which Gloag was seen visibly to wilt under the pressure of the aggressive coppersmiths. Fyfe was made of sterner stuff and clearly relished the task of beefing up the tribunal hearings and of intimidating other potential strikers.

Yet though predictably full of praise for his masterly display of ruthless law enforcement, the Glasgow Herald nonetheless struck a more cautious and conciliatory tone. Thus it recognised that,<sup>52</sup>

"In some recent instances, there has doubtless been an amount of tactlessness on the part of employers or their representatives which has acted like salt in raw flesh. The Act was not passed in order that it might be flourished by foremen and others endowed with delegated power as if it were an Egyptian whip for the back of Israelite brickmakers. It was devised as a means for getting the most out of employers and their foremen as well as out of their squads of skilled and unskilled labourers. It knows no distinction between the wearers of broad cloth and the wearers of overalls. To the extent that that may have

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<sup>52</sup>Ibid.



been forgotten there must be an instant repentance, for the man who contributes to the exasperation of another, which leads to the striking of the latter, is under the same band of guiltiness."

This, of course, was the message which Fyfe attempted to convey on numerous occasions; that the effectiveness of the Munitions Act, and the success of the national endeavour, depended not solely on the coercive enforcement of the Act against workers, but also on 'unity', reflected in firm, but "enlightened" management attitudes to labour. If employers, therefore, were discovered abusing the Act, then it was Fyfe's mission to shame them into rectification. The above newspaper editorial did, indeed, appear to glimpse this insight, signalling a remarkable concession by an establishment-oriented voice which strongly reflected the views of professional and business strata in Glasgow. Yet while it concluded that, "For the moment, the men seem disposed to think that further defiance of the Act is useless", it also portentously added that, "We await the sequel to yesterday's trial with some anxiety".<sup>53</sup> Such caution was of course justified. For, as we saw in chapter two (supra), the subsequent imprisonment of three of the shipwrights who had refused to pay their fines led to a crisis of massive proportions, subsequently recounted in numerous works, which resulted in the rapid amendment to the Munitions Act. Here was a further example of labour legislation as the forcing-house of social change.

#### The Lobnitz Case

Chronologically separating the two Fairfield cases was the prosecution of 20 holders-on at Lobnitz shipyard in Renfrew, who had struck on July 30, remaining out till August 2.<sup>54</sup> The men had sought

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<sup>53</sup>Ibid.

<sup>54</sup>Ibid., August 10, 1915 for details of the case and for quotations. See also Forward, August 14, 1915. The assessors were John Brown, general secretary of the Ironmoulders' Union and Robert Baird of the Coalowners, who also sat in the shipwrights' trial.

an allowance of a shilling a man per day on the ground that workmen elsewhere were receiving this amount. They had approached the assistant foreman riveter, Hugh Gillen, who had informed them that since the managers were at that time absent on a trial trip, he could not grant the increase. What led to the strike, however, seems to have been the manner in which this information was conveyed to the men. For the workmen's representative at the tribunal, the widely criticised W.G. Sharp of the Boilermakers' Society, contended that the men's demand had been received with a "lack of discretion" on the part of the firm. In fact, he continued, with due understatement,

"It appeared to him that the member of the firm referred to [i.e. Gillen] was not in a very good mood that morning, and told them to get out of the works, and they took him at his word".

So once again the accused's representative was faced with the daunting task of offering a defence to a charge whose factual basis could scarcely be denied. Yet the very fact that paltry fines of just five shillings were imposed on the strikers,<sup>is,</sup> it is suggested, a testimony, in part, to the skill with which Sharp conducted that defence. For as well as stressing the provocative attitude adopted by the company's foreman, Gillen; as well as regretting the loss of valuable working time - "The men realised now that it was not going to be advantageous to their interests to stop work" - Sharp also felt it appropriate to employ mildly disruptive tactics, which contained faint echoes of the Fairfield coppersmiths' hearing.

Thus in the first instance, he lodged an objection to the presence, as prosecutor, of Thomas Biggart's assistant, Andrew Duncan.<sup>55</sup>

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<sup>55</sup> Duncan was an assistant solicitor in Biggart's law firm. He later became secretary of the SEF and eventually joined the government during the Second World War. See Wigham, The Power to Manage, op.cit., p.47.



Nothing less than a Crown prosecutor, as distinct from a private individual, would satisfy him. Next, he lashed out at "trial by newspaper", in that the Glasgow press had announced that charges had been brought even before the summonses had been issued. Thus Sharp demanded to know who had been responsible for "thus blackening the men in the eyes of the public before they had a chance to defend themselves". He even turned his hand to a spot of legal juggling, claiming (not without merit) that at the time of the alleged offence, the men had not been engaged on munitions work.

Of course, all this sparring was conducted with a view to softening up the tribunal and the prosecutor. For the object was surely to minimise the penalty which would inevitably be imposed, an object scarcely prejudiced by Sharp's own distancing of self from his members who, as unofficial strikers, were not viewed by him in a wholly virtuous light.

Thus it was that modest fines were imposed on each striker because, said Professor Gloag, the men soon returned to work and, he added, because they possibly "did not understand the absolute necessity of the workmen of this country submitting to the conditions of the Act". But a further explanation is, surely, because Sharp was prepared to stir things up, seeking also to place part of the blame on the shoulder of the employer. In these endeavours, his tactics could hardly be described as unsuccessful.

There was, in fact, no immediate reaction to the prosecution, in the sense of a heightened tension at the firm, nor further industrial action. The Boilermakers' Society journal even failed to mention the incident. The ingredients certainly differed, from those present in the Fairfield cases; and, of course, no-one was imprisoned. Yet Sharp's spirited and somewhat unorthodox assault on the status and credibility of the tribunal proceedings offered a modest example of controlled aggression for constructive aims in an otherwise legally unpromising situation.

Beardmore, Dalmuir

However, as if to compensate for the less obtrusive "profile" which Löbnitz presented in the annals of the Munitions Act, the shipbuilding yard of Beardmore, at Dalmuir, featured prominently in proceedings undertaken under the Act. Beardmore, of course, has attracted considerable attention among labour historians, due principally to the activities of David Kirkwood, convenor of shop stewards of the company's Parkhead Forge works. Kirkwood's immodest account of his personal relations with Sir William Beardmore, his claims to leadership on the Clyde Workers' Committee, his dealings with Lloyd George and his eventual deportation, constitute a fragment of the permanent Apocrypha of Red Clydeside.<sup>56</sup> However, Dalmuir, with its predominantly shipbuilding rather than engineering base, was less affected by the concerns which so animated the CWC. It was not so much the perceived threat of dilution in the sense of the possible replacement of skilled men by less skilled female employees which exerted a disruptive influence on domestic industrial relations. For dilution of this nature scarcely impinged on the shipyards.<sup>57</sup> Rather, the issues that were manifested through confrontations over the Munitions Act derived, first, from the broadly framed section 4(3) of the Act, whose protean quality demanded not merely the removal of obstacles to dilution, per se, but the abrogation of any practice which "tends to restrict production or employment". Secondly, wages questions remained among the more persistent of the issues which continued to surface at this time.

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<sup>56</sup>For his own account, see David Kirkwood, My Life of Revolt (London: Harrap, 1935). Alternative reminiscences are offered in

Gallacher, op.cit., and in McShane and Smith, op.cit.  
<sup>57</sup>W.R. Scott and J. Cunnison, Industries of the Clyde Valley during the War (Oxford: Clarendon Press, 1924) pp 85-6; Reid, op.cit.



Dalmuir Gun-Mounting Dispute

Apart from those proceedings involving shipbuilding employees, the celebrated prosecution of engineers at Beardmore's gun-mounting department was, as Hinton observes,<sup>58</sup> the first prosecution of striking munitions workers in Glasgow. Moreover, like the Fairfield cases discussed so far, the "stay-in" strike was untypical in that it did not originate in a wage rate dispute. Nonetheless, the case had at least one feature in common with the bulk of hearings, including the Lobnitz case, which took place. This was that the very presence of the Munitions Act undoubtedly encouraged the employer to undertake a specific disciplinary move in respect to his workforce, which he would, at most, have been hesitant or reluctant to implement in the absence of the Act's coercive provisions. Furthermore, the spark which ignited the major dispute, seemed relatively humdrum.

Though the participants' versions of the events differed, what apparently occurred was that to enable shop stewards at the firm to attend the Lloyd George meeting in St. Andrews' Hall on Christmas Day 1915, it was arranged that they could be paid their wages a day earlier; that is, on the Friday at 5.15 p.m., instead of on the Saturday, which was customary.<sup>59</sup> However, the gun shop stewards had gained the impression, which they said originated from the instructions of Slade, the departmental manager, that they could collect their pay at 4 o'clock. This was denied and early payment was refused, whereupon James Logan, one of the stewards, allegedly told David Cameron, the firm's accountant, "Good God Almighty, you can surely do me a favour like this, and I will do you a favour some day". Logan

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<sup>58</sup>Hinton, op.cit., p.149.

<sup>59</sup>Glasgow Herald, January 6, 10, 1916 for account of the case. Cf., Woman's Dreadnought, January 15, 1916. The ministry instructed the Solicitor-General for Scotland, T.B. Morison, K.C., to lead the prosecution. The strikers retained a local solicitor, R.G. Carson, who also employed counsel, J.A. Christie.

then saw Archibald Campbell, the general manager, but apparently used such "disrespectful" language to him that he was dismissed on the following Tuesday. The next day, the men conducted their stay-in strike which lasted till the Friday.

During the trial itself, there were some notable exchanges. Thus the strikers' counsel, cross-examining Slade, the departmental manager, asked, "Can you tell us what was the violent language used to Mr. Campbell?" "I can't recall the words", came the reply. "It can't have made very much impression on your mind, Mr. Slade", counsel retorted, to bursts of loud applause from the spectators. Another prosecution witness, a pay clerk, recounted that Logan, on seeing a number of men lining up at the pay office the day before his dismissal, had told them that they were "a damned lot of idiots waiting there for their money. Why not rush the window and take it?" According to Campbell, the general manager, that outburst was the culminating reason for Logan's dismissal. "It was quite impossible to suffer such insubordination", he told the court. His insistence that Logan's dismissal was for disobedience and for unbearable disrespect was, in fact, presented by the company as their response to the men's allegation that Logan had been victimised as a shop steward engaging in trade union activities. Both Slade and Campbell were adamant that this was not so:

FYFE: "You told us that Logan was of pronounced trade union proclivities. Have not all shop stewards these proclivities?"

SLADE: "I suppose they have. Some can be very reasonable and some can be very unreasonable."

FYFE: "You are not suggesting that a man should be dismissed merely because he is an active trade unionist?"

SLADE: "No. If he is active and confined himself to that only, we welcome the shop steward. They are a benefit to us."

FYFE: "Well, I just want to remove the impression that you were dismissing him because he is an active trade unionist".



Turning now to Campbell, Fyfe enquired,

"You have ascertained from your staff that he was regarded as an unsettling influence in the shop?"

CAMPBELL: "I have had it reported to me that he took up so much of his time with matters of that kind that he rarely got much work done."

It was a well orchestrated attempt by Fyfe to lead Campbell and Slade through potentially dangerous ground which would threaten to elevate Logan to the status of martyrdom in defence of the right of trade unionists to organise in the firm. Instead, Beardmore were portrayed as an enlightened and progressive employer, fully recognising the advantages of the shop steward system, conducted by "reasonable" men. In this light and in the light of the evidence of Logan's behaviour and advocacy of force in respect to the pay office, their hope was that the public would be persuaded that the firm were not anti-union, or even anti-shop steward. One suspects that few observers' opinions on this matter would have been altered one way or another by such testimony. Nonetheless, so far as the tribunal was concerned, Logan's protestations of innocence - "I have never had any ill words with Mr. Campbell yet" - were, after this testimony, hard to swallow; and his denials of involvement in any disturbances at the pay office or in the strike itself, difficult to accept. Another shop steward, James Boyd, who had gone to see Campbell, Slade and Beardmore, "in what we term the harem" ('Laughter'), in order to intercede, had had no success. "Sir William Beardmore very near ate us. He said that under no consideration [sic] would he accept a deputation". Not even the compromise of reinstatement plus a tribunal hearing against Logan alone, presumably under the Ordering of Work regulations, would be considered by the management.

Thus, lacking evidence to sustain the accusation of victimisation, Logan and the strikers were enmeshed in a frustrating situation. No doubt Logan was "disrespectful" and uttered rash remarks. But there

is no explanation as to the source of the story that the original paying-out time had been altered from 5.15 to 4 o'clock. Either Logan had invented the story or the management had spread a false rumour possibly hoping, thereby, to provoke a situation enabling them to deal finally with a shop steward who was an "unsettling influence in the shop". If so, then Logan naively walked into the trap and in the face of the testimony of violent language and suggestions, could do nothing about it. This inability either to extricate himself from this dilemma or to prove suspicions of victimisation, no doubt helps to account for the uproar which accompanied the hearing; for the sense of injustice, which perhaps explains why large numbers of sympathisers attended the tribunal or demonstrated outside the building, was surely deeply felt.

Indeed, this feature directs us to a further aspect of tribunal proceedings in Glasgow which the gun-mounting case neatly illustrates. Thus a characteristic element informing many of the major clashes which reached the munitions tribunals was the allegation that one individual or group had treated another harshly or insensitively and that the consequent strike or refusal to obey the foreman's order derived from anger at the way in which the men had been addressed. Such a phenomenon, however, might merely be a surface manifestation of more deep-rooted causes and suspicions which the war emergency had generated. It nonetheless remains part of the fine texturing not just of the accounts of the case offered by witnesses, prosecution and defence but also of the atmosphere in which the tribunal hearing was conducted. The sense that personal animosities (in addition to more structural causes) were being enacted at the tribunal hearing gave the proceedings the appearance of a boxing match between the representatives of "Good" and "Evil"; as bigots might have perceived the fight between Jess Willard, the "Great White Hope", and Jack



Johnson, the Negro champion, which took place a few months earlier in April 1915. For it is not only the combatants who are embroiled in the struggle. The audience, also, is deeply involved. Thus the "personal" dimension cannot be neglected either in respect to the issue being tried before the tribunal, nor in respect to the atmosphere surrounding the hearing.

Thus for some time before the proceedings began on January 5, 1916, the court was crowded by workers supporting the accused; and a strong force of policemen was present.<sup>60</sup> When the Solicitor-General and his junior counsel, M.P. Fraser, entered, there was a good deal of hissing; while on the arrival of the sheriff (a partisan boxing referee?) very few of the crowd stood up, contrary to the custom in courts of law. Even the reading of the complaint by the clerk (master of ceremonies?), T.F. Wilson, was greeted with ironical applause.

With his reputation for severity in the Fairfield shipwrights' case undiminished by the subsequent antics of the government, Sheriff Fyfe immediately launched into a stern warning. If there was any expression of feeling, he cautioned, he would clear the court, an utterance which drew further wry applause rather than the instantaneous silence which he was no doubt seeking.

"I think I know the working men pretty well,  
and a word is quite enough for you. You also  
know me and you know I mean what I say,"

he continued, dispensing bonhomie, threats and bluff in equal measure.

This interaction between tribunal officials, the accused and the spectators did indeed reach bizarre heights at one stage early on in the proceedings when the strikers' solicitor sought an adjournment so as the better to prepare his case. But Sheriff Fyfe would only

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<sup>60</sup>On the chief constable's arrangements, see Hinton, op.cit., p.136.

assent to the request, if the men returned to work. The word of any one of those present at the hearing, declared Fyfe, would be acceptable, whereupon the solicitor pointed out the men's union representative in the audience. But almost immediately, one of the accused stood up and repudiated the official's authority to bind the men. Only if Brother Logan were reinstated "tomorrow", would work recommence. So Fyfe set out asking each of the accused individually. Yet this ploy also had no effect as soon as the union official signalled to the first accused to answer in the affirmative. As the Glasgow Herald,<sup>61</sup> with sober understatement, noted, "it was evident that the men in the court did not approve of this course". To retrieve the situation, one of the delegates persuaded Fyfe to permit a meeting of the men to be held, whereupon Fyfe, officials, and counsel ceremoniously trooped out of the chamber. Yet the police were still hovering in the background until subtle hints were dropped, and they too retired, leaving the trade unionists alone at last in the large court room. Perhaps they felt uncomfortable, or out of place, conducting their unorthodox business within such imposing surroundings, so symbolic of propriety and respectability. Perhaps, rather, they thought they were vulnerable to eavesdropping. The privacy of a side-room was evidently more congenial, so they also got up and left an empty chamber.

Possibly nothing to parallel this spectacle had occurred prior to (nor, perhaps, subsequent to) the event in question in the history of legal administration. To offer a court sideroom to litigants to agree upon terms of settlement might be a relatively common event. But for a judge to vacate the courtroom itself for the convenience, not of civil litigants, but of large numbers of men accused of

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<sup>61</sup>Glasgow Herald, January 6, 1916.



committing a crime (for to strike was a criminal offence under the Act) was surely unique. Moreover, transient though it may have been, it was nonetheless a success for the rank-and-file whose insistence not to be bound by the dictates of the union officials was even given legitimacy by Fyfe's action in acquiescing in the men's demands to consult workshop representatives.

The outcome of the meeting was an agreement to return to work till Saturday when it was hoped that the trial would recommence at 2 p.m. Fyfe, however, suggested that since the hearing would be lengthy, they ought to start in the morning after the men's breakfast break at work. To laughter from those present, he added, "the men would have time to have a wash up and be at the court to enjoy themselves by 10.30." It is, of course, fascinating to note the striking similarity in style between Lloyd George and Sheriff Fyfe in respect to the way in which they tended to address working men. This was, indeed, entirely appropriate given that the first named was the architect of the Munitions Act and the latter was its most vigorous exponent.

The resumed hearing on the Saturday did, nonetheless, pass unmemorably. Fyfe expressed some mild criticism of the tactlessness of the pay office, discovered some obscure ground on which to cross swords with the prosecuting counsel, T.B. Morison, delivered his ritual denunciation of strikes in wartime, and having imposed what he genuinely thought to be a modified fine of £5 on each striker, in view of the "exceptional" circumstances of the case, finally resolve to "let the matter take its course". In the event, of course, the Ministry of Munitions subsequently made an abortive effort to extract a statement of regret from the men, and when this failed, did not press for payment of the fines, which remained unpaid.<sup>62</sup>

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<sup>62</sup> Wolfe, op.cit., p. 132; Hinton, op.cit., p. 136.

The Dalmuir hearing thus joins the lengthening catalogue of open displays of working class ridicule of such sittings, and of the strenuous efforts exerted by the tribunal chairmen to deploy sufficient "muscle" to appear to vindicate the power and authority of the Act but not too much as to cause open rebellion or rejection of its legitimacy. For the point must be stressed that the men on trial did not refuse to recognise the authority of the tribunal. They in fact instructed counsel and were prepared to defend the case on its merits. They may have opposed the Act, but not to the extent of refusing absolutely to participate in the proceedings of the tribunal. What they did seek to engage in, notwithstanding, was a course of calculated pressure, involving thrust and counter-thrust over the terms under which they would consent to be tried, perhaps not a complete "capture" of a legal institution by working people - the rent strike eviction cases which impelled Sheriff Lee to ring up Lloyd George may perhaps be more appropriate - but a highly significant transformation of the court process nonetheless. As mentioned previously, the munitions tribunal appeared to have been structured on characteristics both of the ordinary courts of law and of the threats and bluffs informing the practices of tense joint negotiating committees. The Dalmuir hearing possibly represents one of the highest "achievements" of this combination.

Why Sheriff Fyfe was prepared to tolerate the gradual incursion of "social" reality into his legal domain, thereby loosening his grip on the proceedings, is not readily apparent. His stubborn insistence, when issuing his judgment in the previous Fairfield case, that the tribunal was not concerned with the reasons causing men to strike, is noticeably missing in this hearing. Perhaps the crowd, including the mass-meeting outside the court house, unnerved him in a manner not experienced during the shipwrights' case, with the result that



his resolve was weakened, rendering him more amenable to conciliatory gestures. Moreover, events had shown, subsequent to the Fairfield decision, that pompous remarks stressing that legal criteria were the only valid criteria, were not always the most judicious ploy. The conduct of the Dalmuir proceedings, indeed, had developed, with the connivance of the chairman, almost into a collective bargaining session. An abject surrender of the law was inconceivable, a tactical retreat with honour, tolerable. This perhaps explains Fyfe's uncharacteristic decision to "impose the penalty and let the matter take its course". For given the strategic importance for the war effort which the Beardmore gun-mounting shop represented, he could present the authorities with the knotty problem of extracting the fines - if they so dared - and let them risk a further confrontation. As to threats of imprisonment in the event of failure to pay, that possibility was expediently and carefully omitted from the tariff of punishments.

#### Barclay Curle Apprentices

In one respect, there could not have been a starker contrast between the high drama which accompanied the Fairfield and Beardmore hearings, on the one hand, and the following account of a prosecution of a handful of apprentices on the other. The episode itself casts no light on such matters as the politicisation of the wartime labour movement on the Clyde or on the growth of rank-and-file movements. The incident does, however, demonstrate the manner in which even apprentices' hearings underwent a transformation from the model of staid and cosy "domestic courts" as the authorities had originally desired, and became instead a turbulent forum where insults, threats and bullying were traded among the participants.

The case in question was heard on November 4, 1915 before Cmdr.

Gibson,<sup>63</sup> and concerned the familiar issue of the appropriate rate for a particular job. The evidence showed that the shipyard apprentices, six riveters and two holders-on, had been dissatisfied with the price they had been offered for a certain Admiralty job and refused to work on the terms laid down by their employer. The foreman told the tribunal that the apprentices had been offered the rate of 10/6d for a certain number of rivets and an allowance for obstructions. In reply, the apprentices argued that 12/6d was being paid to a machine squad employed on the same work. Since the company refused to pay them the higher rate, they absented themselves from work on October 15 and 16, as a consequence of which they were now being prosecuted. For good measure, the Ministry of Munitions, represented by James Cramond, also charged them with disobeying the lawful orders of the foreman riveter.

It is clear that technically they might well have been prosecuted before the general tribunal for going on strike. Why they were only prosecuted for an Ordering of Work offence before the local tribunal is not stated; though the fact that the accused were apprentices, in respect to whom a corrective rather than a punishment-orientated approach was thought appropriate, presumably dictated that they face a less serious charge. The fact that the ministry undertook the prosecution probably reflected the belief that officialdom's "short, sharp shock" would be immediately effective.

However, the proceedings in the tribunal, with Cmdr Gibson assuming a stern, headmasterly pose, did not quite match such expectations, as the following dialogue vividly reveals:

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<sup>63</sup>Glasgow Herald, November 5, 1915.



GIBSON: "Did you ever for a moment reflect what you were doing - that you were hindering Government work?"

APPRENTICE: "If it comes to that, you might as well bring the whole yard up here - gaffers and all."

GIBSON: "You were all higgling over pence, while hundreds of thousands of men have given up good income to go and fight for their country in the trenches."

APPRENTICE: "Well, we are willing to do that, too. We were willing to do it months ago."

Clearly ruffled that he was being answered in kind, Gibson could only fall back on his secure privilege of finding guilt, imposing sentences of £2 each, and of refusing leaving certificates for which the apprentices had, perhaps cheekily, applied.

Told that they were required to return to work on Barclay Curle's terms, the apprentices reiterated that they would better serve king and country in the trenches, which suggestion then led to the following exchange:

GIBSON: "You are serving your King and country as well at home as if you were in the trenches."

APPRENTICE: "You would not think so from reading the newspapers."

GIBSON: "Do you forget you are in a court of law?"

APPRENTICE: "Is that so?"

GIBSON: "Do you know it is within my power to send you to prison for the way you have conducted yourself at the bar?"

APPRENTICE: "I thought we could get speaking wherever we went."

GIBSON: "I will stand none of your insolence. Unless you apologise here and now for your conduct, I will deal with you for contempt of court. Do you express your regret for what you have done?"

APPRENTICE: "What have I done? I gave you no insolence. I asked you a civil question. I asked you if we had to go back to that particular job."

GIBSON: "Unless you can conduct yourself a little more discreetly, I give you warning that if

ever there is a case again of persons conducting themselves as you have done, I will certainly deal with them for contempt of court. You may go."

The ability of the apprentices to force Gibson onto the defensive, in which position he felt obliged to utter empty threats, says much either for the youthful innocence of the accused or for their confidence in being able to manipulate the chairman into appearing to justify "Prussian-like" suppression of free speech. Such an uncomfortable revelation, though not expressed by the apprentices in so many words, could only be dismissed as "insolence", which, if repeated, would render the accused liable for contempt. Of course, it was a desperate threat by Gibson in order to retain control of the proceedings, for, as the Treasury Solicitor had pointed out on a previous occasion, the tribunal, possessed no powers to punish for contempt and could only order the offender to be removed from the court, or if "sufficiently disorderly", to be brought before a justice to be bound over.<sup>64</sup>

Of itself, the case is not enlightening on the impact of the Munitions Act on the Glasgow working class. What it does confirm, however, is the character of the Glasgow munitions tribunal as a spectacle where the traditional features of deference to superiors (and to elders); where respect and reverence for the law and its officials; and where humility and contrition on a finding of guilt (which was as much a moral condemnation as a factual one) have all disappeared. Thus the justice of the ruling class was, in this episode, seen to be less than majestic, even if not, as on other occasions, positively ridiculous.

One must, of course, acknowledge that the nature of the complaint

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<sup>64</sup> OHMM, Vol. IV, Part II, p.12.



levelled against the apprentices would have some bearing on how they responded in the tribunal. For example, they were no doubt emboldened in the stance they took in court, justifying their action by pointing out that "experienced men" at the works had advised them of the appropriate rate for particular jobs. This no doubt lent legitimacy, in their eyes, to their resistance to the firm. By contrast, when, in another case, six apprentices from the same shipyard were prosecuted a week later for absenting themselves from work in order to play football,<sup>65</sup> the scenes witnessed in the first hearing were not repeated. It would have been difficult for this second group of apprentices to assume a moral stance in respect to their football playing which would inform their conduct at the tribunal. Thus, the issue in question would have to be worth defending if the protest were to have any impact. At the outset of their career, the very existence of the tribunals might have given grounds for popular sniping at such institutions' legitimacy and authority. Once, however, the initial impact of their presence began to wear off, issues more substantial than prosecutions for playing football during working hours were no doubt necessary if resistance, in whatever form, was to be displayed.

#### The Deportation Strike Prosecutions

For a number of reasons, it is entirely appropriate that the present chapter should conclude with an account of the prosecution of those participating in the deportation strikes of March 1916. As well as marking a crucial watershed in the history of the dilution campaign, the events surrounding the removal of the shop stewards from the Clyde district corresponded to important shifts in the

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<sup>65</sup>Glasgow Herald, November 11, 1915.

character of the legal dimension to the history of the wartime labour movement in Glasgow. At the most general, but also most significant level, though grievances continued to be expressed, the massive displays of unrest on Clydeside over the Munitions Act began thereafter to diminish, as Harry McShane, in his recent autobiography, seems to confirm.<sup>66</sup> But there were other related indications. First, while the deportation strikes were the finale of the Clydeside shop stewards' resistance to dilution on government work imposed on the government's terms, they also symbolised the final curtain of the régime of Gloag, Gibson and Andrew, the tribunal chairmen whose extreme sensitivity, especially in the case of Gloag, encouraged the militants, in the view of the Ministry of Munitions, to pursue a policy of disruption.

Second, the Munitions Amendment Act, passed in January 1916, authorized the establishment of the Munitions Appeal Tribunal, presided over by the Court of Session judge, Lord Dewar. Moreover, it was now laid down that in the munitions tribunal, the two lay assessors, if unanimous, could bind the tribunal chairman on any question, of fact. Third, from this time, the appearance of women munitions workers before the tribunal became a more frequent, if not yet common, occurrence, necessitating, additionally, the appointment of female assessors. Fourth, a greater number of applications to the tribunals were emanating from the iron and steel trades (and, in particular, from labourers) rather than, as formerly, from the shipbuilding sector. Fifth, more and more cases before the tribunal were inextricably linked to military conscription, whereas this was not an issue for the tribunals to consider (though they did deal with cases involving military recruitment) prior to 1916. Sixth,

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<sup>66</sup>McShane and Smith, op.cit., p.77.



the depth of coverage of the cases in the newspapers altered after this time, as the military tribunals attracted more attention. Additionally, there was a greater tendency to omit the names of firms and defendants appearing before the tribunals, even in important strike prosecutions. Presumably this was on the instruction of the censor. Whether the reason was to avoid passing on military secrets to the Germans, to prevent the British public from reading of labour unrest in their own country, which the authorities might think would adversely affect morals, or whether, finally, it was to save the managers of the firms, particularly in the large munitions companies, from any possible embarrassment arising from the cases (and, especially, from tribunal criticism of their conduct towards their employees), is not clear.

For all the above reasons, then, the deportation strike prosecutions mark an important watershed in the legal, as well as in the industrial, history of wartime Clydeside labour.

The progress of the strike and the deportation of the shop stewards have been analysed in extenso by writers such as Wolfe, Gallacher, Wrigley, Hinton, McLean and Pribicevic whose works have all been cited elsewhere in this research. Therefore only the briefest reference to the immediate background to the tribunal hearings will be offered here. Thus in the midst of the troubles, the government had widely advertised its intention to threaten the deportation strikers with the Munitions Act, and with DORA, notices to that effect having been posted in the affected workshops. Moreover, the decision of the ASE Executive to condemn the strikes as "unauthorised and unconstitutional", the refusal of strike pay, and the Executive's instruction to the district committee to order the men to resume work,<sup>67</sup> allowed the tribunal further leverage in handling the strikers firmly without the fear of incurring simultaneously the wrath of the union. Indeed, said the Glasgow Herald,<sup>68</sup>

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<sup>67</sup>Glasgow Herald, March 27, 1916.

<sup>68</sup>Ibid.

"There is also abundance of proof that they [the ASE] have been almost as amazed as outsiders at the Government's patience - it is a stronger expression in their mouths; for whilst it may be true in a sense that gravity is only a recent development, the sinister beginnings of the evil were not hatched in an impenetrable secrecy. Many have been the warnings to the Executive, but as in some other matters, a lack of courage has given strength to the forces of disaffection..."

The local engineering employers likewise demanded that the government "put the fullest powers of the Defence of the Realm Act into operation against ringleaders".<sup>69</sup> One significant feature, we may observe, is the emphasis which the employers, perhaps unconsciously reflecting the corporatist strategy for munitions production, consistently placed on the steps which the government, rather than the employers themselves, ought to take, to meet the threat posed by militants. For they perceived such issues as involving "law and order", or even constitutional, questions. Thus while the employers readily supplied the names of "agitators and undesirables" within their establishments to the dilution commissioners, the evidence necessary for prosecutions, they insisted, had to be obtained by the government.<sup>70</sup>

That it was the Ministry of Munitions which prosecuted the strikers, rather than their employers, was therefore entirely consistent with the view taken of the strike by the employers; that is, that it was directed against the Military Service Act, all forms of government control, the agreement of the ASE to dilution and the Committee on Production's recent decision on the Clyde wages question.<sup>71</sup>

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<sup>69</sup> NWETE, Minute Book No. 7, March 23, 1916. A sub-committee was also delegated to meet the dilution commissioners to press the need for prosecutions. See ibid.

<sup>70</sup> Ibid., March 27, 1916.

<sup>71</sup> Ibid., March 23, 1916. This, of course, was the argument put by Addison in the Commons. See McLean (1983) op.cit., p.81. Ironically, this analysis should have prevented proceedings under the Munitions Act, since the definition of a strike under section 19(b) only covered action over an employer's terms of employment. It was the CWC's view of the strike's objective which, by contrast, met the criteria of section 19(b).



These were all features which pointed to a political campaign, rather than to a domestic industrial relations issue. Thus the protestation of the CWC that, "The trouble at Parkhead is purely local, and is no part of any general policy", clearly failed to convince.<sup>72</sup>

The trial itself took place in two sessions, the first hearings being conducted on March 29 in the thick of the struggle. Ten of the accused were from Beardmore's Parkhead Forge, ten from the Dalmuir gun-mounting shop and a further ten from the North British Diesel Engine Works at Whiteinch. The neat symmetry was a product of Sheriff Fyfe's suggestion that a representative number be selected from the principal sites affected in order, so he told the tribunal, "to cause as little inconvenience as possible".<sup>73</sup>

For the occasion, the strikers had been able to obtain the services of Rosslyn Mitchell, the "lawyer dandy"<sup>74</sup> and confrère of David Kirkwood. It may indeed have been an inspired choice in the sense that Mitchell was not prepared to let proceedings run an uncontroversial course confined to the eliciting of stark answers to the uncomplicated question whether these accused had in fact breached the Munitions Act by participating in an illegal strike. Instead, he harried the chairman, Sheriff Fyfe, and the ministry prosecutor, J. Turner, MacFarlane, by raising gratuitous and obstructive preliminary pleas designed, no doubt, to deflect attention from the substantive legal question whether the men had committed the alleged offence. When he could go no further in undermining the prosecution case prior to addressing this question, he simply refused to participate any more in the proceedings.

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<sup>72</sup>Glasgow Herald, March 30, 1916.

<sup>73</sup>Ibid.

<sup>74</sup>Arthur Marwick, The Deluge (London: Macmillan, 1973 edn.) p. 74.

Thus he first attempted to question MacFarlane's credentials authorising him to prosecute, an objection which Fyfe dismissed as "impertinent". Next, he applied for a postponement of the hearing on the ground that the most important witnesses for the defence were precisely those who had been removed by the military authorities. They, alone, could speak on "interviews and other matters relative to the facts". Any attempt to conduct a hearing in the absence of these witnesses would only lead to a "burlesque trial". Mitchell; however, protested too much. It was, of course, his intention throughout, to orchestrate the proceedings in this way. For a "proper" trial would only confirm the "legitimacy" of the men's guilt. By portraying the proceedings as "burlesque", the legitimacy of the verdicts themselves might appear to be compromised or sullied.

However, on being pressed by Fyfe that a postponement was generally permitted only where the accused returned to work, Mitchell replied that the "whole atmosphere had changed since the stoppage in question", as a result of the deportations. For, he continued,

"... six of the men who knew most about it had suddenly been kidnapped from their homes, and were now hidden away from the defence. Indeed, he did not know what men would be available as witnesses next week. He did not know when his men would disappear,"

he added, to roars of laughter from the large and vociferous crowd watching the proceedings. Thus a stalemate was reached, as no return to work was remotely likely at that juncture.

In reviewing Mitchell's tactics, it is clear that he had little interest in ascertaining the correctness or otherwise of the legal charge. His object was, rather, to dramatize the event with a view to depriving the final verdicts (that the accused were "guilty") of that conventional legitimacy which the theatre of judicial proceedings is designed to promote. Finishing with the rhetorical flourish that,



"... there were men who regarded it as of more importance that the military should not be permitted to take away men in the midst of the night from their houses than that munitions should be produced",

he finally made his dramatic exit, announcing that he proposed to take no further part in the proceedings.

Since the defence offered no evidence, Sheriff Fyfe once more embarked upon his solemn lecture. Yet he seemed to invest it with a deeper political significance than in previous condemnations of strikers in wartime. For no doubt he was conscious of the climactic nature of the cases before him. Thus he declared that,

"Their solicitor had been perfectly frank, that they were out to defy the law and the Government. You have taken up the attitude that a certain shop steward is to manage the work ... I venture to think that not only the law of the land but the common sense of the nation is against any such preposterous doctrine."

What was therefore novel was that by stripping away the facade of legal technicality, Sheriff Fyfe had expressly disavowed the supposedly apolitical nature of legal formalism which underpins capitalist legal relations. Of course, within the context of the corporatist munitions code, Fyfe made connections between law and policy every time he sat in judgment in a munitions tribunal. But this was conditioned by wartime exigencies. His political pronouncement in the deportation strike hearings was surely both descriptive and prescriptive of the legal foundations of an industrial society free from the ravages of war restrictions. Ironically, his defence of a capitalist legal regime which would continue long after the experiment with war collectivism had expired, was an outspoken political response on behalf of a system which was not, in fact, under threat. For although a number of the accused, during the second diet of hearings arising out of the deportation strikes, expressed a revolutionary motive informing their industrial action, the strikes, it is clear, were confined to more parochial questions pertaining to Kirkwood's

freedom of movement at the Forge. Political change played little or not part in the strikers' agenda. By misconstruing the situation and by obfuscating the motives of the strikers, Fyfe uncharacteristically allowed his rhetoric to get the better of him. For he used his judicial office as a platform from which to launch an explicitly political repudiation of what he wrongly perceived was the shop stewards' vision of the permanent revolution.

Yet at the second round of tribunal hearings in the wake of the deportation strikes,<sup>75</sup> the sheriff was in fact confronted with the spectacle of three accused shop stewards who did indeed adopt a pronounced revolutionary stance during the proceedings. One of these individuals was an American, John Cuzins (or Cuzen), a member of the International Machinists' Union of America. In presenting his case to the tribunal he had first attempted to widen the scope of the dialogue by pointing out the dangerous condition of the machine he had been operating. He was not in fact the first accused to raise this matter. For, another American, Thomas Nolan, had testified that he had been informed in Philadelphia that Beardmore were to give them "proper labour conditions". Obviously sensing a threatened loss of control, Fyfe immediately stopped this line of argument, declaring, "We are not concerned with labour conditions here." Here again is illustrated the imposition of legally defined criteria of relevance whereby the "secondary" reality of law elbows out the "primary" reality of individuals' own experiences. Cuzins was no more successful in his endeavour than Nolan. So having failed to deflect attention to the company's failings, he expounded his own philosophy. He had come out in sympathy with the other strikers, for, he asserted, "Men were justified in the breaking the law if the

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<sup>75</sup>Glasgow Herald, April 14, 1916; AIMS, Monthly Report, May 1916, p.72. About 60 men were tried on this occasion. Thirty-two were fined £5 each, about 25 established that they had been ill at the relevant time and several Belgians were excused.



law was against the men." But such remarks were scarcely bound to impress Sheriff Fyfe whose response was to impose a hefty fine of £20 on Cuzins. Thus,

"Not only had he broken the law, but he had come before the tribunal and upheld the principle of breaking the law. That was an attitude which the tribunal could not regard otherwise than in a serious light. If [the] accused lived in a country, he must obey the law of the country".

Cuzins was followed into the dock by William Craig, a shop steward at Dalmuir. He also felt the men were justified in breaking the law, for which deed he did not feel in the least sorry. Indeed, since matters had, he added, quietened down in the district, this latest batch of prosecutions would only inflame tempers once more. Moreover, the authorities themselves had ignored the men's request that their grievances be attended to. Six weeks of inaction had elapsed, and, of course, strike action, after three weeks' notification to the Board of Trade, was permissible.

The revelation that constitutional steps had been taken in vain,<sup>76</sup> persuaded Sheriff Fyfe to recall to the witness stand a third accused, David Hanton, a shop steward at Parkhead Forge. As one of Kirkwood's lieutenants, he had been directly involved in the incident at the New Howitzer Shop when the shop stewards sought to check the wage lines of the newly imported female workers.<sup>77</sup> No permission to do so had formally been granted by the management, and this was used as the pretext to prevent Kirkwood's freedom of movement as convenor of shop stewards (Given these facts, the selection of an equal number of strikers from each factory clearly did not imply a random selection from each establishment).

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<sup>76</sup>The story is supported by the narrative account in the Manifesto Issued during the Strike at Parkhead Forge, 1916, by the Engineers - Addressed to Fellow-Workers in the District. See copy in Scott and Cunnison, op.cit., Appendix XIX; Glasgow Herald, April 1, 1916; ASE, Monthly Journal and Report (executive council report), April 1916.

<sup>77</sup>Labour Party, Report of the ... Deportation in March 1916 of David Kirkwood and other Workmen... (London: Labour Party, 1917), esp. paras.

Hanton had already been found guilty by the tribunal, and fined £25 after having replied to Fyfe's questioning that in this instance, he, too, felt /it was justifiable to break the law. As a shop steward, it was, for him, a matter of principle that he support the men striking over the restrictions imposed on Kirkwood; indeed, he still, at the time of the trial, adhered to that view. Fyfe was, of course, governed by different principles. Thus,

"A man occupying the position of shop steward", sniffed the worthy sheriff, "instead of encouraging the breaking of the law, should try to see that the men obeyed the law. The tribunal regretted that a man who acted as shop steward should take up the attitude - which he still defiantly did - that going on strike on March 17 was justified."

However, on his recall to the witness stand, he explained that the outstanding grievance to which the previous accused, William Craig, had referred, concerned the non-union status of soldiers, themselves skilled engineers, drafted into the Forge to undertake turning and fitting. According to Hanton, the agreement to maintain a union shop was thereby breached, a matter reported to the authorities but not rectified after a long passage of time. In the light of this, he implied, the strike was purely lawful. Yet according to Sheriff Fyfe, that arrangement was superseded by the dilution scheme; and given this premise, it was logical for him now to conclude that, "Whether the men belonged to a union or not is a matter of absolute indifference". Thus by sleight of hand, the men's original grievance was defined out of existence and the strike tainted with illegality. There was thus an unbridgeable gap separating the two competing realities, reflected in the imposition of punitive fines on the one hand and the affirmation of the justice of the strike on the other.

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77 cont'd 60-71. Hanton later stood unsuccessfully for the post of Glasgow district secretary of the ASE, a position won by Harry Hopkins of the Govan Trades Council. See Glasgow Herald, October 11, November 12, 1917; ASE, Monthly Journal and Report, October 1917, p.4.



We may observe, therefore, that the verbal interchanges during the hearing constitute remarkable examples both of the articulation of alternative realities and of the simultaneous and frank recognition by Sheriff Fyfe that the law could not possibly tolerate the "preposterous doctrine" of workers' control. Thus in the first instance, Fyfe repeatedly emphasised the primacy of legal autonomy; that is, that law was an independent institution, compliance with which was a fundamental and absolute obligation, which could not be subject to any condition precedent. For the accused, however, "legal reality" was refracted through "social reality". If the latter dictated a course of conduct at odds with the injunctions of the former, then the path illuminated by the latter must be followed if the issue in question were sufficiently grave to justify a departure from rule worship.

Yet, secondly, to insist on the artificial separation of legal reality from social reality was, at base, tactical. After all, the exercise of discretion, conferred on judges frequently turned on assessments of what was deemed to be socially or politically practicable or desirable. Indeed, the munitions code itself was a corporatist law tending to embody explicit policy objectives. Thus Fyfe's outspoken defence of what <sup>were,</sup> in effect, capitalist property relations, was not as sharp a break with traditional judicial utterances as might have been supposed. Nonetheless, his repudiation of the idea of the workers "managing the shops" was an admission of the partisanship of law as the idealisation of the capitalist system which most judges, except the brash, such as Bramwell or Atkinson,<sup>78</sup>

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<sup>78</sup>For Bramwell (1808-1892) and for Atkinson (1844-1932), see A.W.B. Simpson (ed.) Biographical Dictionary of the Common Law (London: Butterworth, 1984) pp 74, 19-20. Bramwell was an "exponent of rugged individualism", especially noticeable in mid-nineteenth century trade union cases. Atkinson, "under the guise of restating the law ... was able to inject his own extremely Conservative brand of politics." The best known example concerned his attack on the "eccentric principles of socialistic philanthropy" and the "vanity of appearing as model employers" shown by Lansbury's Poplar council in 1925. See Roberts v Hopwood [1925] A.C. 578.

eschewed making. In a sense stepping out of the context of wartime corporatist law, Fyfe's self-proclaimed neutrality, and his loyalty only to the rule of law as the embodiment of that neutrality, thus suffered a revealing lapse. In this sense, the tribunal hearings paradoxically both supported, and exposed as a fallacy, the ideology of the law as an institution wholly autonomous of dominant class interests.<sup>79</sup>

### Conclusion

It may be argued that the close inspection of the half-dozen proceedings of the Glasgow munitions tribunal recounted in this chapter ought to be of interest not only to the labour historian, but also to the analyst of court room procedure, and to those engaged in exploring working class attitudes to law. The hearings themselves no longer were simply a forum for adjudication, but an environment within which displays of bluster, cajolery, bullying and intimidation were employed in varying degrees by accused trade unionists or by their representatives. Yet such behaviour was rarely, perhaps never, pointless nor negative. As tactical ploys, such displays were adopted precisely in order, as those unionists conceived it, the better to advance their or their members' interests. Indeed, when we analysed the fascinating verbal exchanges between tribunal chairmen and the accused or their representatives, we saw how the chairmen attempted

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<sup>79</sup>It is not claimed that the stance adopted by the shop stewards was necessarily comprehended in these terms by all those participating in the strikes. We are dealing merely with how a number of strikers hauled before the tribunal, perceived the experience. Nor are we arguing for widespread popular support for these men's resistance to the law. They were indeed the minority who were prepared to make a principled stand. Bearing in mind, also, that the strikes did not enjoy overwhelming support among munitions workers on the Clyde, it is open to question whether these strikers' actions achieved popular legitimacy, let alone popular support. It is arguable, indeed, that the Fairfield coppersmiths' actions, in view of their union's support for behaviour which their secretary had described as "quite legal" came closest to attaining such popular legitimacy.



in vain to prevent this transformation (and, indeed, to prevent disorder generally at the tribunal) by endeavouring to control the content of courtroom conversation by reference to legally defined criteria of relevance. They found difficulty, however, in holding back the efforts of determined adversaries intent on imposing on the proceedings their alternative reality. No matter how much trade unionists might bemoan and bewail the Munitions Act while they were at work, their attitude to it was transformed once they were congregated in the hall where the tribunal was meeting. Now it became the means by which they could enjoy a carnival atmosphere at the expense of the dignified pomposity of the law; perhaps indeed the tribunal was a surrogate for their own employers whom they might be inhibited from treating in a similar fashion. There is therefore no evidence from the tribunal proceedings analysed here that workers struck a reverential posture towards the institutions and personnel of the law. On the contrary, experience points to the tribunals as the object of ridicule, rather than of respect, a function, no doubt, of the chairmen's inability to employ successfully, remedial devices in order to routinise and thus render impotent, outbreaks of tribunal disorder.

However, the contempt of trade unionists for the proceedings was double-edged. For in the final analysis, they were prepared not merely to defend cases vigorously with the assistance of lawyers and trade union officialdom. They were even prepared, as will be more fully elaborated in subsequent chapters, to go on the legal offensive and take their employers to court. There is little doubt that working-class attitudes to law were in this light complex, often opportunistic and occasionally contradictory.

Thus in evaluating the contribution of the Glasgow munitions tribunal to the policy objective of disciplining recalcitrant

workers who went on strike or who otherwise engaged in collective behaviour prohibited by the Act, it is evident how unsuccessful was the effort of the authorities to stamp out repetitions of such conduct. Even apprentices refused to be intimidated by the harsh words and penalties imposed on the first batch of young workers hauled before the tribunal. Perhaps the penalties prescribed for Ordering of Work offences (as distinct from strikes) were seen by all to be derisory; a maximum fine of £3 was laid down in the Act. Moreover, the Fairfield episodes, coming so early in the history of the tribunals, deprived these institutions of any credibility as a deterrent to be feared by Clydeside labour. The more widespread was the militancy, the more forlorn were the efforts of the chairmen to change either attitudes or behaviour. The fact is that such judicial institutions were not always the most appropriate bodies to handle the kinds of disputes which continually surfaced at this time. A judicial forum must come down on one side or the other. It cannot engage in distributive justice or make allocations as an arbitrator might do; or reach compromises as a joint negotiating committee might agree upon. In the most crucial department, that of deciding on guilt or innocence, the tribunal was engaged in a zero-sum game. In respect to sentencing it could exercise discretion, as it could when hearing leaving certificate applications. Clearly, it capitalised on this escape route as frequently as possible, in an attempt to pacify an unsettled Clydeside labour movement. But when this avenue was not open to it, then the tribunal's ruling that, for example, workers had committed an offence by striking illegally, merely succeeded in prolonging a grievance and building up further resentment. Unlike say, an arbitration award, the tribunal did not dispose of, but merely furthered, the initial dispute. While, in the final analysis, it is impossible to prove whether the existence of the tribunals resulted in the bottling-up of grievances which otherwise



would have been forcefully pursued, the evidence of repeated conduct prohibited by the Act which is displayed in this chapter, and indeed, throughout the whole work, strongly indicates that where the prospects for successful arbitration were considered dim or non-existent by groups of workers, then the tribunals were no deterrent against industrial action. Indeed, it can be advanced that for many such groups, the existence of the tribunals failed even to cause them to contemplate the usefulness of arbitration. The testimony of many strikers, that they were unaware of the provisions for compulsory arbitration or of the unlawfulness of strikes is, of course, evidence not of the state of their legal knowledge but of their sheer indifference, perhaps even contempt, for its restraints. Against this determination, the tribunals were doomed to a Canute-like existence in the fruitless hope that legislation could conquer all. Recognising the ultimate futility of their efforts to stamp out strikes and other breaches of works rules, the tribunal chairmen were reduced to attempts to control the conduct of proceedings by delimiting the content of permitted court room conversation. And when this ploy spectacularly broke down in dramatic and well-publicised circumstances, the tribunal chairmen were left to go through the motions in determining guilt or innocence, and in trying to preserve their own self-respect. This entailed the imposition, on occasion, of penal sentences, but it more frequently led, through the exercise of discretion, to the imposition of mild sentences, reflecting the chairmen's surrender to the harsh reality that law was no weapon to suppress (though it could attempt to punish) industrial action. Law, in short, was not so much the restrainer of industrial conflict, as the amplifier.

Table 4.1 Cases Discussed in Chapter Four, August 1915 - April 1916<sup>1</sup>

Date of Action	Date of Hearing	Chairman	Firm	Prosecutor	Description of Employees	Type of Legal Case	Issue	Number of Employees	Outcome	Punishment
July 27	Aug. 2	Gloag	Fairfield	Employer	Copper-smiths	Strike	Demarcation prosecution dispute	28 <sup>2</sup>	All guilty	2/6d
Aug. 27	Sept. 3	Fyfe	Fairfield	Ministry	Shipwrights	Strike	Sympathy strike prosecution over sacking & leaving certificate endorsement	26 <sup>3</sup>	17 guilty; 9 cases withdrawn	£10
July 30-Aug. 2	Aug. 9	Gloag	Lobnitz	Employer	Holders-on	Strike	Wage demand prosecution	29	All guilty	5/-
Dec. 29-31	Jan 5, 8	Fyfe	Beardmore, Dalmuir	Ministry	Gun-mounting shop engineers	Strike	Dismissal of shop steward prosecution	28	All guilty	£5 (never paid)
Oct. 15-16	Nov. 4	Gibson	Barclay Curle	Ministry	Riveting & holder-on apprentices	Ordering of Absent without Work prosecution (+ dispute; disobedience; leaving obeying certificate foreman applications)		8	All guilty (+ leaving certs. refused)	£2
Mar. 17 et seq.	Mar. 29	Fyfe	Beardmore, Dalmuir; Parkhead Forge; N.B. Diesel, Whiteinch	Ministry	Engineers	Strike	Restriction prosecution and/or deportation of shop steward(s)	30	All guilty	£5
Mar. 17 et seq.	Apr. 13	Fyfe	Beardmore, Dalmuir & Parkhead Forge (& elsewhere?)	Ministry	Engineers	Strike	Restriction and/or prosecution deportation of shop stewards)	c. 60 <sup>4</sup>	c. 35 guilty; c. 25 discharged	32, £5 2, £25 1, £20

Source: Compiled from information in chapter four. Notes <sup>1</sup>The cases are not listed in chronological order

<sup>2</sup>Three hundred had struck

<sup>3</sup>Four hundred and twenty-six had struck

<sup>4</sup>At its peak, it was estimated that not more than 4,500 workers were on strike throughout the district. See Hinton, op.cit., p.157.



CHAPTER FIVECollective Bargaining By Litigation1915-1916<sup>1</sup>Introduction

In November 1916, Sheriff Fyfe was confronted by a number of applications for leaving certificates, submitted by a group of operative plumbers. The applications were, however, peremptorily refused. For the tribunal chairman was well aware of the ulterior motive behind the plumbers' initiative. Thus he stated<sup>2</sup>,

"We are daily endeavouring to impress ... that settling wages disputes is not the function of this tribunal. If a man is getting the rate of pay recognized in the district for workmen of his class, this tribunal has no power to offer any opinion as to whether that rate of pay is sufficient in the circumstances of the times. That is a matter for the Board of Trade, not for a munitions tribunal. It is quite useless for men to deluge this tribunal as they are daily doing with leaving certificate applications based only upon the ground that the district rate of pay is insufficient for their needs."

Thus Sheriff Fyfe was astute enough to realize that the central issue in this case was not an unswervable determination on the part of the plumbers to leave their employment. Their intention was, simply, to force an upward shift in the wage rate provisions of the collective agreement applicable to their case. The attempt by the plumbers to transform the tribunal into some kind of arbitration body or wages tribunal was thus emphatically rejected by the chairman. But in fact the

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<sup>1</sup> Matters pertaining to women's wages and to dilution, including the change to different payment systems, are mainly covered in chapters ten and eleven respectively.

<sup>2</sup> Glasgow Herald, November 22, 1916.

gradual process of mutation, though never a complete transformation, had commenced almost from the outset of the tribunal's existence. Moreover, irrespective of the tribunal decision itself, the very fact that a wage grievance was being ventilated in open court - whether the formal hearing was a leaving certificate application, a strike prosecution or an Ordering of Work complaint - would serve as a pressure point on the employer or the authorities to provide a remedy to the underlying issue.

The principal argument of this chapter, therefore, is that munitions workers were prepared to use the tribunal pragmatically and resourcefully as an aid towards the achievement of collective bargaining goals. Given the comparative accessibility of the tribunal in the context of an industrial relations system which prohibited strikes and industrial indiscipline and which imposed wage norms ratified by a centralized bureaucracy, munitions workers were prepared to commit offences, go on strike, accuse their employers of making unauthorised changes to wage rates or of failing to comply with wage awards, even to threaten to leave their employment by lodging leaving certificate applications - all in order to expedite their wage claims.

Indeed, the experience of compulsory arbitration as the war wore on, made such steps even more rational in the circumstances. Thus as one local newspaper correspondent wrote at length<sup>3</sup>,

"Experience has shown that the Board of Trade procedure is hopelessly inadequate for the purpose of dealing with the innumerable little local questions which arise in every district, and which might for the most part be dealt with on the spot immediately they arise and before they grow into a source of serious trouble. The Board

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<sup>3</sup>Ibid., November 24, 1916.



of Trade, with its present organization of travelling Commissioner centralized in London and having the whole country for his field of operations, cannot possibly deal adequately with these questions, and employers and workmen know by costly experience of the last 12 months the weak points of the present procedure. Endless correspondence with London, irritating delays, waste of time and money travelling from Glasgow to London, and many other obstacles have made it difficult for the employers and workmen to use the existing Board of Trade procedure for the settlement of disputes. Occasional visits of the Chief Industrial Commissioner himself to Glasgow are not sufficient to enable him to deal promptly with the accumulation of small matters for which an immediate local hearing and a prompt decision are the most effective cure."

Applications such as those of the plumbers, could thus be construed as a protest against a cumbersome, unproductive centralized system, an attempt to break the log-jam holding up progress, or an effort to shock employers out of the secure complacency which the prohibition of strikes and the imposition of compulsory wage regulation might have induced. However, as well as reflecting the unions' preference for local autonomy as against centralized wage fixing, the attempts to recruit the tribunals for their case, or even simply to employ the opportunity to express their case publicly, perhaps reflected a deep and continuing commitment to collective laissez-faire, more particularly to the element of bargaining inherent in voluntarism. Not for those unionists, the absolute adherence to corporatist unity which remote union leaders had pledged in the first half of 1915. A market for labour might well be hedged round by legal restrictions, but local trade unionists rose to the challenge by utilizing the law imaginatively. In doing so, they exhibited little compunction about sowing industrial disorder as a tactical step. The resultant litigation was a further stage in the process. Hence the description, "collective bargaining by litigation".

In developing this theme, we may point up a number of different, but ultimately related, objectives which trade unionists might pursue in tangling with the munitions tribunal. One might, initially, differentiate between the use of the tribunal as a final arbiter on the one hand and the use of tribunal proceedings as part of an extended and continuing process on the other. In the first category might fall those cases where trade unionists sought to establish a point of principle; or sought a definitive ruling from the tribunal on the applicability of the Munitions Act to specific groups of workers; or where they even wished to "clear their name". For example, rather than concede the right of their employer, Barclay Curle shipyard, to transfer them to a different site, three riveters chose instead to apply for leaving certificates<sup>4</sup>. The grant of the certificates by the munitions tribunal thus signified a rejection of the employer's assertion of managerial prerogative. In another case, the technical argument as to whether 27 shipwrights had been "dismissed" disguised the real issue in the case, whether a shipyard could insist on redeploying men in its employment once a particular job had been wound up by the employer<sup>5</sup>. The sharp cleavage between legal relevance and "social" relevance, as explored in chapter four (supra), was once more illustrated. Thus,

"The Sheriff said he appreciated the point that the transfer might be inconvenient to the men. Doubtless had the men been consulted before the intimation was given to them, there might have been no trouble. There was only one question before the tribunal, and that was whether the men were dismissed. They were not going to consider the right of the firm to transfer the workers."<sup>6</sup>

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<sup>4</sup>Ibid., October 20, 1915. The case will be discussed in a different context in chapter six (infra)

<sup>5</sup>Ibid., August 18, 1916.

<sup>6</sup>Ibid.



But that, of course, was precisely what the tribunal proceeded to do.

In the second category, where the intention was to obtain a definitive ruling on the coverage of the Munitions Act, the case of the Rutherglen carters is particularly noteworthy<sup>7</sup>. An arbitration award in September 1916 had granted carters a wage rise of 4/- a week. Though willing to implement the increase, one local employer, who had been paying 2/- a week above the district rate, decided to cease paying this extra sum, claiming that it was a gratuity which could be revoked at will. Her employees raised the matter with their union officials, Hugh Lyon and Harry Erskine, general secretary and district delegate, respectively, of the Scottish Horse and Motormen's Association. Lyon did not believe that carters were covered by the Munitions Act, but recognized that transport workers frequently encountered difficulties over their legal status; for example, whether they required leaving certificates to obtain employment elsewhere<sup>8</sup>. He therefore advised his members to go on strike for the avowed object, said Lord Dewar, in the appeal tribunal<sup>9</sup>,

"... of testing the question whether the men fell within the provisions of the Act, and not with the intention of defying the law."

If they did, then the strike would be called off and he, Lyon, would pay the men's fines himself. In the event, both the Sheriff and Lord

<sup>7</sup>Angela Tuckett, The Scottish Carter (London: Allen & Unwin, 1967) pp 135-7; Glasgow Herald, November 16, 1916; Preston et al. v Knox 1917 SMAR 39-43 (November 13, 1916).

<sup>8</sup>In May 1917, the Association submitted a resolution to Glasgow Trades Council to the effect that the government should enable non-munitions workers to obtain leaving certificates from their employers on their dismissal. This would permit carters, in particular, to obtain alternative employment more easily. See Glasgow Trades Council, Minutes, May 30, 1917. In fact the 1916 Act, in section 6(b) permitted the Minister of Munitions to frame rules which allowed tribunals to grant certificates to persons not engaged on munitions work.

<sup>9</sup>1917 SMAR, at p 42; cf., the editorial in the Glasgow Herald, November 16, 1916.

Dewar ruled that carters engaged on the transport of raw materials to and from a controlled establishment, which was not, of course, their own employer, were covered by the Munitions Act (and therefore could presumably prosecute the employer for having failed to give effect to a wage direction of the Minister of Munitions).

In contrast to those cases which suggested the airing of a point of principle or tested the scope of the legislation, were those where workers sought to "clear their names" or to register their protest against oppressive conduct (not usually involving questions of wages) allegedly perpetrated by foremen or managers. The object of lodging leaving certificates or, conceivably, of refusing to obey a lawful order, was to secure the termination of the managerial conduct to which objection had been taken, or even to score a point off the employer in the prestige stakes.

A useful illustration concerned applications by 16 engineers employed at a large munitions works in Glasgow's East End, presumably Parkhead Forge. It is clear from the statements made by William Kerr, the ASE district delegate who represented the men at the hearing<sup>10</sup>, that the applications for leaving certificates were in retaliation for insulting remarks about their competence made by one of the firm's managers. At the hearing, the employer, desperate to retain these skilled men, realised that they had the company over a barrel; while they themselves clearly reveled in the authority they were able to exert. Would the men accept an apology from the manager who in fact had no jurisdiction over them and whose opinions were not endorsed by the company? Even the head of the firm, perhaps Sir William Beardmore himself, would undertake that no such cause of friction would arise again. Consequently, Sheriff Fyfe persuaded

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<sup>10</sup>Ibid., September 5, 1917.



the men, but presumably without too much difficulty, to withdraw their applications. First demanding a written apology to appear in the union's journal, they eventually settled for the public apology given at the tribunal hearing which was, anyway, to be reported in the daily press, together with the company's testimony that they were "the best type of workmen within their works." Thus honour was settled by a tactical use of the legal process which the munitions worker themselves set in train. The law could therefore be employed profitably to vindicate a status position, the disregard of which became a festering sore. As a tactic, it seemed a more decisive and less dangerous method of obtaining redress than either engaging in prolonged, non-legal negotiations with the management who would, under little threat, be inclined to close ranks; or taking strike action which might lead to a prosecution<sup>11</sup>.

In the above example, a simmering domestic grievance was extinguished following the submission of leaving certificate applications by individuals who clearly had little or no desire to part from their employer. In this instance, the initiative came from the work group to whom any resulting benefit would accrue. But where, as in another case, it was the trade union which instigated a leaving certificate application by a clearly reluctant employee, then the resolution of the grievance between the employer and the society was less assured<sup>12</sup>. Here, careful enquiries by the chairman, Sheriff Fyfe, elicited the existence of the schism between the union and the member involved in the case.

<sup>11</sup>Cf., Slack v Barr, heard in the Court of Session in January 1918, when a worker claimed he had been slandered by an assistant manager who told the Committee on Production that the employee had been dismissed for want of skill. The court held that the statement was privileged. Almost certainly, the case involved George Barr, Beardmore's assistant manager. See Labour Gazette, June 1918, p 243.

<sup>12</sup>Glasgow Herald, June 7, 1916.

What is not clear from the brief report of the above case is the nature of the grievance. Nor more importantly from the perspective of this chapter, is it known whether the application was viewed by the trade union as yet another stage in a continuing bargaining exchange, involving threats and bluff. Alternatively, was it simply designed to draw attention to a hitherto unrecognized grievance in much the same way as rioting in the past was perceived as the method adopted by communities such as Maldon in Essex to compel the justices to perform their duty and regulate the supply of grain?<sup>13</sup> For munitions workers similarly took direct illegal action in the belief that such conduct was a crucial, perhaps socially legitimate, method of bringing their grievances to public attention. The shipwrights mentioned in chapter one, whose patriotism Cmdr. Gibson had applauded, despite their industrial action at Elderslie Graving Dock, perhaps fall into this category of those publicising legitimate grievances through illegal conduct.

The above cases sought to illustrate the point that munitions workers might invoke the law or infringe its provisions in order to mobilise the tribunal as a final arbiter or as a shock troop in order to obtain an immediate settlement of an issue or grievance. In fact, such a tactic was only rarely employed. What was more common was to find that the pursuit of illegal industrial action, or the submission of leaving certificates, or complaints by employees of unauthorised alterations of wage rates, represented further and more dramatic steps taken by munitions workers in a negotiating process which had probably commenced at an earlier stage but

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<sup>13</sup>Cf., John Walter, "Grain Riots and Popular Attitudes to the Law: Maldon and the Crisis of 1629", in John Brewer and John Styles (eds.), An Ungovernable People: The English and their Law in the Eighteenth Century (London: Hutchinson, 1980), Ch.2.



which was now perhaps bogged down. It was not simply a matter of drawing attention to "legitimate" grievances which the other side had a "duty" to rectify. Rather the process was a purer version of "collective bargaining by litigation" than the "one-off" efforts of the previous category cited. An example might be the various steps taken by Beardmore caulkers, transferred by their employer to water-testing. As we shall see in detail, this particular dispute dragged on for months, during which time the caulkers were prosecuted once for an Ordering of Work offence; they themselves unsuccessfully prosecuted their employer for allegedly altering wage rates unlawfully; and, finally, they submitted on three separate occasions, in December 1915, in January 1916 and again in May 1916, leaving certificate applications. Eventually, an agreement was hammered out by arbitration conducted by Sheriff Fyfe.

It is difficult to interpret these various legal steps as anything other than an attempt to manipulate the legal system to influence the outcome of an instrumental, wage-related object. They were efforts to apply bargaining pressure at different stages of a prolonged struggle, employing law as a weapon in that struggle, and not as an end in itself. Given that other avenues were strewn with obstacles, a drastic situation demanded drastic remedies, a lesson well learned and applied frequently in practice, as we shall see.

One caveat which might be expressed in seeking explanations for trade unionists' appearances before the tribunals is that hearings might draw attention only to ostensible causes of disruption and not to more hidden fears and suspicions which perhaps underlay the manifest conduct of which they were accused or which prompted leaving certificate applications. Thus the formal labels or even formal excuses for industrial action might hide the existence of less clearly articulated factors. For

example, as we shall see, when electricians employed by the shipbuilders, Alexander Stephen & Co., demanded payment for working during their tea-interval, they were, perhaps, more intent on obtaining a concession, not for its own sake, but to strengthen their position in forthcoming negotiations over acceptance of the electricians' general works rules in the yards. Similarly, when Beardmore sheet-iron workers lodged leaving certificate applications and accused the firm of labour hoarding, their real object may have been to pre-empt the introduction of the premium bonus payment system for such workers, despite the fact that no such suggestion was floated before the tribunal. While the evidence for such interpretations remains circumstantial, we can only acknowledge that motives for behaviour are frequently complex and contradictory. Nonetheless, if one pursues the analysis of tribunal cases solely in accordance with the formal legal labels attached to the type of case, one runs the risk of missing crucial dimensions,

It is clear that as well as analysing these collective hearings before the tribunals as various stages in a negotiating process, we may also demonstrate that working class attitudes to the law were both resourceful and opportunist, as well as hostile. Thus, much as the Munitions Act may have been hated and conceived by many workers as an instrument of slavery, this opinion did not prevent trade unionists from attempting to make use of those of its provisions which enabled them to go on the legal offensive against employers. That they were often unsuccessful in respect to the verdicts may have added ammunition to the reform campaign in late 1915. But this would be to miss the point that positive gains could be made simply by forcing employers to defend claims made against them at the tribunals, or to expose them, in prosecutions of



workmen, to criticism from tribunal chairmen that their styles of management were inept or injudicious. Indeed, apart from any such symbolic trade union victories, a boisterous hearing, coupled with the imposition of fines (or even imprisonment) could create an atmosphere of excitement for trade unionists, just as participation in a strike might do. Thus trade unionists might rally against the Munitions Act, but out of adversity might spring a new sense of comradeship or purpose. Even if such a suggestion remains in the realm of wild speculation, it must be recognised that confronted with a constricting legislative provision, workers would be acting rationally if they attempted both to maximise their gains under an unfavourable system, and sought to minimise the constraints. Thus their conduct might pull in a direction different to that implied by public criticisms, for example, by those expressed before the Balfour-Macassey Commission. There was no real contradiction. They used the law where they could, for otherwise their positions might worsen. But they reserved the right to engage in propaganda, special pleading, and political agitation.

One final observation on the structure of the present chapter is necessary. This is that no attempt has been made to present a detailed and exhaustive analysis of the wage regulation provisions per se, of the Munitions Acts 1915-17. These were essentially facilitatory provisions, enabling the Minister of Munitions to issue numerous orders establishing wage rates for selected groups of workers, whether time or piece rate earners, whether male or female, skilled, semi-skilled or unskilled, and employed in a multitude of diverse occupations and locations. Only a very small number of such orders came to the munitions tribunals where their applicability to particular groups of workers might be tested. When they did so, the complaint was the straightforward one that the

employer had failed to give effect to a binding award under, for example, Part One of the 1915 Act or under section 1(2) of the 1917 Act which related to the celebrated 12½% bonus. This procedure was more properly compulsory arbitration than collective bargaining by litigation, though a complaint of failure to implement an award was, as we shall see, an integral part of a continuing process of pressure and counter-pressure.

Apart from the fact that the wage provisions were essentially enabling powers, they bore on a wage pattern which was, basically, a confused jumble and which defies adequate presentation. According to Wolfe, writing after the war<sup>14</sup>,

"... to display, or rather to invent ... a unity in the description of wages would be deliberately to falsify the whole account. There was no such unity, either of purpose or in fact, in the handling of the wages problem; but on the contrary a swirling mass of tendencies, now crossing, now swinging apart, equally impossible to disentangle or to reconcile."

The reasons are familiar. First, the rich diversity of industries, occupations, levels of skill, gender differences, methods of payment, and geographical areas covered, were testimony to the pre-war autonomy in bargaining arrangements whose effects could hardly disappear overnight once statutory wage regulation had been introduced. If the general tendency towards collective bargaining was identified in the pre-war era, a simpler picture of wage structure did not thereby evolve. Second, government regulation, like much else of the war economy, advanced in stages while still enabling autonomous settlements to be reached where possible. Knock-on effects on other trades, despite state regulation (indeed, perhaps because of it) were not uncommon.

Even where the Committee on Production sought to impose a degree of uniformity in its awards, this remained at the most general level. As

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<sup>14</sup> Wolfe, Labour Supply and Regulation, op.cit., p 235.



can be seen from table 5.1 (infra), in the period from February 1915 to September 1915, settlements (on a sectional or district basis) frequently were 4/- on time rates and 10% on piece rates. From September 1915 to the spring of 1916, there was a tendency to refuse advances, thus obliging munitions workers to place a higher premium on local organization if improvements were to be gained. From the spring of 1916 to April 1917, various advances, commonly of around 3/- on time rates, were awarded; while from April 1917, the institution of national settlements began to occur. Yet it is important to note that in all these cases, the awards were strictly defined as war bonuses, added on to the pre-war rates whose determination turned on the permutation of those factors - occupation, skill, payment system, and so on - cited above. The centralizing influence of compulsory arbitration and of numerous statutory arbitration tribunals still left an untidy picture containing anomalies galore. For not even the Committee on Production could rectify the glaring distortions thrown up by wartime payment systems interacting with wildly divergent base rates. Nor, of course, could it define exactly the coverage of its awards, preferring to leave this matter to the industries affected<sup>15</sup>.

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<sup>15</sup> Non-federated firms would present yet a further problem. The extension of recognized terms to such firms was finally settled by section 5 of the 1917 Act, though questions of interpretation might of course still arise.

TABLE 5.1  
Committee on Production Cycle  
of Advances

Cycle	Approximate Dates	Nature of Advance
First	February 1915 to September 1915	4/- on time rates; 10% on piece rates
-	October 1915 to April 1916	No Increases
Second	May 1916 to November 1916	3/- on time rates only
Third	April 1917 (national agreement)	5/- to time- and piece-workers
Fourth	August 1917 (national agreement)	3/- to time- and piece-workers
Fifth	December 1917 (national agreement)	5/- to time- and piece-workers
Sixth	June 1918 (national agreement)	3/6d to time- and piece-workers
Seventh	November 1918 (national agreement)	5/- to time- and piece-workers

Source: Henry Clay, "Government Control of Wages in War-time" in Henry Clay, The Problem of Industrial Relations (London: Macmillan, 1929), p 37.

Even armed with section 4(2) of the 1915 Act which prohibited the alteration of wage rates in controlled establishments without its consent, the Ministry of Munitions,

"... with one frail weapon were called upon to control wages which were in fact being controlled by a dozen sets of circumstances over which they were powerless."<sup>16</sup>

In any case, the most effective method of wage regulation (apart, to a lesser extent, from the anti-strike clauses) was the leaving certificate

<sup>16</sup> Wolfe, op.cit., p 254. Section 4(2) had limited effect because (1) only 6,000 out of 32,000 engineering establishments were controlled; (2) the power related to changes in wage rates. New recruits, consequently, could receive higher rates than existing employees, but this would only trigger off "catching-up" claims; (3) government establishments such as Woolwich Arsenal were initially excluded from its scope; and (4) inter-departmental tension might arise if, say, the Ministry of Munitions refused its approval in the case of employees on urgent Admiralty work. For other explanations, see Clay, op.cit., p 27.



scheme which sought, not always successfully, to douse an over-heated market for labour. Such a scheme operated arbitrarily and inelegantly, a wholly unfitted mechanism for the imposition of order and neatness on the crazy-paving pattern of wage structure.

Given such a chaotic picture, its definitive unravelling should be left to the labour economist or to the specialist historian of labour markets. Here, the preference is for an analysis of how groups of workers, for reasons ventured at the beginning of this chapter, employed the munitions tribunal pragmatically, in an attempt to carve out their own solution to those bottlenecks, predominantly, but not invariably, concerning wages, which the legislation had created or sustained. In the account which follows<sup>17</sup>, it should become abundantly clear that while the principal focus is upon the use made of the tribunal to enhance or protect the economic interests of munitions workers, the conceptual distinction between resort to the tribunal as, first, a final arbiter and, second, a staging post, cannot always be maintained in practice, with the first conceptual model frequently collapsing into the latter. Yet where, as in the plumbers' case (supra), the chairman might resist the attempt to emasculate the distinctive, judicial features of his tribunal by refusing to aid the unionists' endeavours to engage in collective bargaining by litigation and thereby prolonging a grievance, his ruling on the applicability of an award or of a complaint of wage reduction might dispose of the wage issue for all time. His role as final arbiter would thus be manifested. In the majority of the following examples, however, the munitions tribunal was employed more as a bargaining weapon, sometimes wielded unsuccessfully, than as a final adjudicator. Yet to paraphrase, the wonder was not that it was done well, but that it was done at all.

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<sup>17</sup>The cases are presented more or less in chronological order.

The First Phase: July 1915 to May 1916

A. Munitions Workers on the Legal Offensive

One distinction which will be employed is between those circumstances where legal proceedings might be initiated without a breach of the law by workers, and those where it was necessary that an offence against the Act be committed by them before a hearing was conducted. In the former category would fall leaving certificate applications and complaints that employers had either failed to implement a wage award or had made an unauthorised wage alteration. In the latter category would fall strike and Ordering of Work prosecutions. In one or two episodes, more than one form of legal proceedings might occur, itself an indication of the probable existence of a course of "collective bargaining by litigation". Thus although there was a long tradition of law-breaking as a tactic to compel the authorities to act<sup>18</sup>, it was not necessary during the war to infringe the law in order to bring grievances to an employer's attention. The lodging of leaving certificate applications would have the same immediate impact; though of course there could never be a guarantee that the complaint of the employees would be rectified.

Thus in the first example involving a number of coppersmiths at Fairfield's shipyard, the lodging of leaving certificate applications did have this effect. It thus operated as a clear reminder to the company of the issues which had informed the celebrated confrontation some months earlier<sup>19</sup>. The district secretary of the National Society of Coppersmiths, Alexander Turnbull, had submitted 25 applications to the tribunal on behalf of members at Fairfield<sup>20</sup>. They complained that as a result of

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<sup>18</sup>Brewer and Styles (eds.), op.cit.

<sup>19</sup>Chapter four (supra)

<sup>20</sup>Glasgow Herald, March 3, 1916.



the firm's sub-contracting some of the work to private firms, their services were not being fully utilised. The unspoken assumption was, of course, that a policy of hiving off some of the coppersmiths' work to sub-contractors was inconsistent with the company's previous claim that there was a shortage of coppersmiths, thus necessitating the employment of plumbers.

Perhaps fearing the embarrassment which such a revelation in open court might cause them, the firm held a meeting with Turnbull in the morning before the hearing was due to take place. As a result, Turnbull informed the tribunal that the applications were to be withdrawn. Though no further details emerge from the report, we can guess that Turnbull was able to extract a commitment from the company that there would be no further sub-contracting if this was reducing the coppersmiths' skilled work load. Another possibility is, of course, that Fairfield would agree to the removal of any remaining plumbers in the copper shop in exchange for the withdrawal of the leaving certificate applications.

Whatever agreement was hammered out, it seems that the lodging of the applications was a tactical move by the coppersmiths in a bargaining process, rather than an indication of a genuine desire on the part of the men to leave the firm. Thus the use of the legal process in this sequel to the major confrontation involving the Fairfield coppersmiths was not to seek a specifically legal remedy in the form of the grant of certificates, but to prod the company into taking action on the men's grievance. Here, then, is a further example of the,

"... use of court action as a stage in a quarrel, as a means by which one party indicated to another that matters had gone far enough ..."21

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<sup>21</sup>Olwen Hufton, "Crime in Pre-Industrial Europe", International Association for the History of Crime and Criminal Justice, Newsletter, No.4, July 1981, at p 21.

The case also illustrates that not every grievance which resulted in a tribunal hearing directly concerned wages, though it is clear that such issues were central to the vast majority of such hearings. For example, in January 1916 ten workers employed in shell-making at Armstrong Whitworth's works at Alexandria, near Dumbarton, complained that the company had infringed the Act by reducing wages<sup>22</sup>. The complaint was that in December, the firm had changed the type of shell on which they had been working. The price for the new shell was 4d, instead of 5d for the previous shell, although there was a difference of only eight to ten seconds in the time taken to manufacture them. In lodging their complaint, the men made clear that what they were seeking was that the price dispute should be settled. They were therefore willing to accept Sheriff Fyfe's suggestion that the case be withdrawn and submitted to the Board of Trade for arbitration. Whether the men were hoping that the chairman's decision would settle the price question or whether they employed the tribunal simply as a point of bargaining pressure must remain uncertain. As indicated earlier, the distinction between the two conceptions of the tribunal's function was never water-tight.

Not unexpectedly, Beardmore's featured prominently in such hearings. Indeed, the following case, heard in March 1916, was considered by Sheriff Fyfe to be the "most important yet raised before the Glasgow Tribunal"<sup>23</sup>. Undoubtedly, the learned sheriff's criteria of importance failed to correspond to munitions workers' assessments, for whom complaints over wages or over shift arrangements, while important, did not conjure up the

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<sup>22</sup>Glasgow Herald, January 20, 1916.

<sup>23</sup>Ibid., March 16, 1916.



sense of emotion investing a strike prosecution. Nonetheless, that Beardmore's engineers, in this case, resolved to go on the legal offensive against their employer is itself a striking reminder of the calculated steps which munitions workers, otherwise straight-jacketed by the Munitions Act, were prepared to take to ameliorate their situations.

Their complaint was that by transferring them from night shift to day shift the company were reducing their earnings from £3:13/9d to £2:1/11d<sup>24</sup>. There had been prolonged negotiations but these had proved fruitless. Finally, faced with an ultimatum, the men eventually agreed to go on the day shift under protest rather than walk out, a decision which Fyfe characteristically commended. The evidence showed that the rate of pay, 9½d an hour, was the same for both shifts, but that an extra allowance for night shift was awarded. According to the men, this had the effect of establishing a different rate as between the two shifts.

However the decision, which Sheriff Fyfe reserved for some days, was in favour of the employers. The transfer, made necessary according to the company by the winding-up of night shift work, did not constitute a change in wage rates since there was no "class" of night shift worker. The engineer's rate was preserved throughout.

"The arrangement of shifts is a domestic matter" said Sheriff Fyfe<sup>25</sup>, "which must necessarily rest, and by recognized custom has always rested, entirely with the management of the establishment. The Munitions Act, never contemplated anything so impossible as that the manager of a controlled establishment, employing probably thousands of men, should have to run to the

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<sup>24</sup>The company's representative, W.G. Davidson of Biggart, Lumsden & Co., had raised the preliminary plea that no change in the rate of wages, as stipulated in the Act, had occurred. The sheriff, nonetheless, allowed the hearing to continue.

<sup>25</sup>Glasgow Herald, March 25, 1916. See also Scottish Law Review, Vol. 32, July 1916, p 151.

Minister of Munitions for his consent every time he finds it necessary to alter the number of men on the night shift."

On the other hand, of course, the rationale of the provision preventing rate-cutting unless approved by the ministry was surely to protect earnings, and that was precisely what was not being protected. Yet this obvious failure of policy left no impression on Fyfe. Moreover the engineers' claim that each man "made his domestic arrangements upon the footing of the night shift pay" which was always likely to cease at some stage, distinctly failed to impress the sheriff.

"If he did so, which I can hardly believe, he acted very foolishly, and he cannot plead hardship arising from his own foolishness."

The opportunity to pontificate upon working class thrift, hard work, discipline and commitment was never spurned. Instead these "foolish" individuals were; in effect, accused of greed in wishing to "monopolise the more remunerative night work". Evidently, they did not deserve to win their case. Even the strong suggestion of the men that they were being victimized was dismissed peremptorily by the sheriff. For although many other employees remained on the night shift, yet,

"It mattered nothing to the management which 10 men were taken out of the night shift. That was left to the foreman and there is nothing in the evidence to suggest that he favoured one man more than another."

Allegations of victimization virtually incapable of proof, together with arbitrary adjustments to the wage packet for which no remedy was forthcoming at the level of the shop floor, made resort to the munitions tribunal look like a last, desperate throw of the dice. One suspects that the chances of success cannot have been rated particularly highly by the men themselves, but that the attempt was simply to apply whatever obstructive pressure was readily available. It was, ultimately, therefore, a



vain endeavour to prolong the bargaining over shift rates through a legal initiative whose only faint promise of success was to sap the energies of, and wear down, the employer<sup>26</sup>. Beardmore's, however, were made of sterner stuff, having just two days' earlier seen off a challenge in the tribunal mounted by 23 members of the Sheet Iron Workers' Union<sup>27</sup>. Applying for leaving certificates on their behalf, their union official, Alexander Richmond, complained that the company were hoarding labour which could more usefully be employed elsewhere. In reply, the company stated that they were shortly to put more men on permanent overtime. In any case, it was shown that a number of the applicants had been guilty of bad timekeeping. In the event, the certificates were refused. The men's otherwise "laudable" efforts to demonstrate the more efficient use of labour backfired. Yet there is a strong likelihood that the tribunal applications were a protest against the hoarding of labour, a practice condemned vociferously by the trade unions at the Balfour-Macasey Commission some months earlier and which had not abated as a result. Alternatively, the tribunal applications may have been the culmination of a series of conflicts within the company's workshops which other methods of negotiation had failed to settle. What was the source of such conflicts, if any, is, however, nowhere indicated.

When we turn to the case of the Beardmore caulkers we can observe how an issue was pursued determinedly by a group of workers prepared to employ a rich variety of legal and non-legal steps to press their case. Here, undoubtedly, was a prolonged dispute where the tribunal was employed prag-

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<sup>26</sup>As we shall see in chapter six, it was this case, Reid et al. v Beardmore, which the Ministry of Munitions' reports officer, J. Turner MacFarlane, had discussed with Lord Dewar, with a view to mounting an appeal to obtain a binding decision which would support Sheriff Fyfe's finding.

<sup>27</sup>Glasgow Herald, March 24, 1916.

matically and opportunistically to further the aims of a group of workers.

The first stage in the dispute occurred when a large number of the firm's caulkers held a lunchtime meeting at the Dalmuir yard in September 1915<sup>28</sup>. Their purpose had been to discuss a recognized price list but the meeting ran over the scheduled time. Ordered to restart work, the men refused, and after much haggling, most left the works at 4 p.m. An Ordering of Work prosecution conducted by the local Ministry of Munitions official, Paterson, was held the next month, the 50 men prosecuted being represented by their shop stewards, Robert Hyde and Donald McPhail. Hyde explained to the tribunal that the background to the dispute was dissatisfaction with piece prices. Other yards such as Fairfield's and John Brown's had a recognized price list, but Beardmore's did not. The lunchtime meeting was intended to decide on the men's proposals to a joint committee which the company themselves had recommended should draw up a list. The meeting had run just ten minutes over time, when the foreman, Henry Gascoyne, ordered the men back to work. However, just as in the Lobnitz holders-on case (chapter four, supra),

"It was not so much what he said as the way in which he said it that irritated the men. He told them to get to their work or get outside the gate."<sup>29</sup>

Thus is illustrated one of the features characterising domestic labour relations under the Munitions Act. This was the scope available to foremen to strike a more disciplinarian and uncompromising pose than formerly, in the knowledge that the Ordering of Work regulations made it an offence to disobey "lawful" orders. The result was that<sup>30</sup>,

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<sup>28</sup>Ibid., October 8, 1915.

<sup>29</sup>Ibid.

<sup>30</sup>OHMM, Vol. IV, Part II, p 61. In the Beardmore prosecution, the men were fined £2 each.



"... the workmen resented every order which they did not like, whether it was reasonable or not, as a direct consequence of the Act."

But just as relevant is that the dispute is also symptomatic of a lingering grievance which continued to afflict the caulkers' relations with their employer; that is, the dissatisfaction already expressed with the price list. Indeed, one specific aspect of the wage structure was at the root of the caulkers' unrest, and had already been raised with the Balfour-Macassey Commission<sup>31</sup>. This was the transfer of caulkers to less lucrative and less pleasant work on water testing.

Following the abortive lunch-time meeting in September with its resultant prosecution the next month, the caulkers decided to take the dispute a stage further. Thus eight of them lodged a complaint that Beardmore's, by transferring them to water testing, were altering rates of pay without ministry approval, contrary to section 4(2) of the 1915 Act. The hearing took place before Sheriff Fyfe just before Christmas 1915<sup>32</sup> at a time when the Clyde already was in a ferment over the proposed visit of Lloyd George to the district. W.G. Sharp of the Boilermakers' Society, who, according to William Gallacher<sup>33</sup>, had gone to Newcastle on the 22nd to meet Lloyd George prior to the latter's visit to Glasgow, was in fact at the Glasgow munitions tribunal that day, putting forward his members' case. Prompted by Sharp, one caulker, William Hill, explained<sup>34</sup>,

"If the firm had agreed to pay the average rate of wages, there would have been no trouble. If there

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<sup>31</sup>Glasgow Herald, November 18, 1915, reporting that a tribunal complaint had been postponed. For the eventual hearing, see below.

<sup>32</sup>Ibid., December 23, 1915.

<sup>33</sup>Gallacher, Revolt on the Clyde, op.cit., pp 78, 81.

<sup>34</sup>Glasgow Herald, December 23, 1915.

had been no Munitions Act, he would have left the employment of Messrs. Beardmore. He was forced into an unfair position by the Munitions Act. Four of the squad had been getting  $1\frac{1}{4}$ d an hour, and the other four were on piece-work, and were earning as high as 2/- per hour."

On transfer to water testing, the rate became  $10\frac{1}{2}$ d plus 25%, which was said to be equal to  $1\frac{1}{4}$ d, or  $3\frac{1}{4}$ d less.

The dispute was not about deskilling, that is, putting skilled men on unskilled work. Craft control was not being threatened, for the Boilermakers' Society maintained that water testing was caulkers' work, and must be done by them, even though it was the "lean" part of their work<sup>35</sup>. The complaint was, in fact, that the water testing rate was too low for the dirty, uncomfortable and hazardous work involved. The caulkers had tolerated the shortfall of 3d an hour in the past without complaint. Now it seemed ripe to register a protest which had in fact been building up for some time and had influenced the decision to hold the controversial lunch-time meeting referred to earlier. Though the employers were therefore not seeking to force through new working conditions under the umbrella protection of the Act, and though the caulkers' complaint was dismissed, nonetheless, said Sheriff Fyfe<sup>36</sup>,

"The Court .. considered that the spirit of the Munitions Act was that work should not be allocated in such a manner as to result in any man earning less than he had previously been earning."

The puzzle is why such a dispute had not broken out earlier. Certainly, once the Munitions Act was placed on the statute book, the employers would have been less hesitant in using it to force through unpalatable redeployment of labour which past experience may well have indicated was

<sup>35</sup>For a brief description of the work involved, see G.A.B. Dewar, The Great Munition Feat (London: Constable, 1921), pp 146-7.

<sup>36</sup>Glasgow Herald, December 23, 1915.



not favourably received by the men. As the Official History of the Ministry of Munitions observed<sup>37</sup>,

"... transfers from highly paid work, such as caulking, to work, dirty, disagreeable and less well paid, such as water testing, were not accepted with any better grace because the Munitions Act threatened compulsion."

Perhaps in the past, a threat to leave for, or an actual departure to, the yard down the road might have done the trick, especially following the abolition of discharge notes by the CSA in 1912. With the advent of the Munitions Act, the submission of leaving certificate applications was an alternative method of drawing attention to the caulkers' grievance.

Thus on the very day of the above hearing, the first such leaving certificate was granted to a Beardmore caulker, George Aitken<sup>38</sup>. The day after that, a Canadian caulker sought a certificate, though in his case, his argument was that he had had no experience of water testing<sup>39</sup>. Earning from £4 to £5 a week, he told the tribunal that it was not the reduction of wages involved in water testing to which he objected, an assertion to which we might attach doubtful credence. Certainly the tribunal clerk, Thomas Wilson, stressed the wage implication by pointing out that the effect of the employer's action was to put a man earning 1/6d an hour on to work at 1/1d an hour. The tribunal chairman, Gibson, similarly stressed the ideology of the market. Indicating that the company would be acting "indiscreetly" if they insisted on the retention of his services, Cmdr. Gibson added<sup>40</sup>,

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<sup>37</sup>OHMM, Vol. IV, Part II, p 61.

<sup>38</sup>Glasgow Herald, December 23, 1915.

<sup>39</sup>Ibid., December 24, 1915.

<sup>40</sup>Ibid.

"At a time like the present, every man was worth his price. They had been getting good service from the applicant in the capacity he was originally engaged for, and he thought it would be in their own interest to agree to keep him at that work."

The firm, taking the hint, took the chairman's advice. But what was still alarming them was that following Sheriff Fyfe's decision in the wage reduction case (supra), they were now faced with leaving certificate applications from the eight caulkers involved in that hearing.

This case eventually came on a month later after a previous date for the hearing had been postponed to allow the Board of Trade to intervene<sup>41</sup>. But since the Boilermakers' Society had claimed to know nothing about this reference to arbitration, they insisted on the tribunal hearing taking place. When it did, the company accused the men of snubbing the attempt of the Committee on Production to arbitrate, an allegation which the tribunal chairman, James Andrew, apparently accepted. Nonetheless, since he indicated that a reference to arbitration had to be consensual, the men could not be compelled to submit their claim to that body. Consequently the tribunal was faced with just one question, namely whether the transfer of the men from one part of the works, and from one task to another, at a reduced wage, justified the grant of leaving certificates. He ruled affirmatively.

This decision, of course, placed the company in some difficulty since caulkers threatened with a transfer to water testing could simply resort to the tribunal without much fear of subsequent unemployment in a labour market where their skills were in constant demand. Perhaps to discourage a future tribunal chairman from issuing a similar ruling, or perhaps to reinforce the management's weakened authority, the Committee on Production

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<sup>41</sup>Ibid., January 20, 1916.



suddenly rediscovered the reference to it of the caulkers' grievance, a reference, we may recall, which the union insisted had been unilaterally made by the company without its knowledge. On February 11, 1916, therefore, the Committee on Production issued its decision which conveniently upheld the company's contention that they were not required to pay piecework caulkers, transferred to water testing, their average piecework earnings<sup>42</sup>. This still left undecided the position regarding time-rated caulkers transferred to water testing, as was the case with four of the eight complainants in the hearing before Christmas 1915.

As a result, the grievance rumbled on. Indeed when John Brown & Co. made changes in water testing rates around May 1916, Beardmore's caulkers sought similar increases<sup>43</sup>. On being refused, 65 of them promptly lodged yet more leaving certificate applications<sup>44</sup>. This action, it appears, finally convinced the company to seek a permanent solution acceptable to the caulkers, though it needed the determined efforts of Sheriff Fyfe at the tribunal to push the two sides nearer to each other. With William Mackie, the Boilermakers' official, insisting that Beardmore should come into line with the rest of Clydeside and with George Barr, the company's assistant manager, adamant that an "existing private arrangement", made in January 1912, should be honoured, Fyfe offered to recommend a settlement, given that "he could never think of granting all these certificates". It seems that Mackie was amenable to this suggestion, which has the interesting implication that he was probably more confident of obtaining a favourable settlement from Fyfe than from the Board of Trade, if the view of his adversary, Barr, is to be believed. According to the latter,

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<sup>42</sup> Labour Gazette, March 1916, p 113.

<sup>43</sup> CSA, Minute Book No. 9, May 29, 1916.

<sup>44</sup> Glasgow Herald, May 22, 1916.

whose opinion the hearings of January 1916 appear to have substantiated, the Boilermakers' Society had in fact declined to refer the dispute to arbitration in the belief that the outcome might result in some of their members having to accept less wages than they were getting. Despite this, a consultation between representatives of the Boilermakers' Society and the firm, conducted before Sheriff Fyfe, was arranged at which the company eventually indicated its willingness to consider fixing a uniform rate for water testing<sup>45</sup>. But even this concession was far short of an agreement as to what those rates ought to have been. Indeed, it took another ten months of haggling before this festering sore finally subsided, when another arbitrator, with delightful simplicity, decided that caulkers put on water testing should be paid time and a half<sup>46</sup>.

Thus, having taken an unconscionable time a-dying, the whole episode of the Beardmore caulkers, put on water testing, reveals clearly the relationship between important Munitions Act hearings in Glasgow and the pursuit of collective grievances. On a number of separate occasions, the men's wage dispute provided the foundation for proceedings conducted under different legal categories. Various sets of leaving certificate applications were submitted, one complaint by the employer was heard under the Ordering of Work regulations and one was lodged by the caulkers that the employers were unlawfully altering wage ratios. On top of this, arbitration was arranged, not once, but twice, the latter seemingly settling the matter finally. The role of the Munitions Act in this extended drama was to provide an airing for the men's grievances - perhaps to offer an institutional framework where little of this nature previously existed - rather than to suppress them. The negotiating

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<sup>45</sup>CSA, Minute Book No. 9, May 29, 1916.

<sup>46</sup>Labour Gazette, April 1917, p 155.



character of a prosecution or of an application for leaving certificates is thus vividly illustrated while the rejection of compulsory arbitration was matched only by the imaginativeness with which it was sought to circumvent it.

The experience of the Munitions Act "in action" at Beardmore's Dalmuir works during this first legal phase, mid-1915 to mid-1916, reveals that the question of wages was a prominent concern among the workforce. For it informed the disputes over water testing and over the transference of engineers to day shift. Possibly also the sheet-iron workers seeking leaving certificates, conceived of the prospect of overtime earnings with other firms, whilst those colleagues remaining at Dalmuir might enjoy a greater amount of work distributed among a smaller number of men. In this endeavour, they were pre-empted by the firm's disclosure of its intention to place the men on permanent overtime in the near future. What was at the basis of the dispute is, however, still a matter of uncertainty. Perhaps the company resisted the leaving certificate applications simply in order to draw attention to the statistics of bad timekeeping which remained a preoccupation with the Clyde shipbuilders.

A further possibility is that the union wished to register its protest against the firm's plans to extend the premium bonus system to the sheet-iron workers, by demonstrating that a more efficient organization of the work schedules, including the extension of overtime, would render unnecessary the introduction of this particular incentive-ridden scheme of which they were profoundly suspicious. If this was the union's objective, then it failed to prevent an arbitration award issued by Sir Thomas Munro, county clerk of Lanarkshire and Clyde dilution commissioner which in August 1916 decided in favour of the company's plan to extend the

system to the sheet-iron workers at Dalmuir<sup>47</sup>.

The union did not, however, accept this decision without demur. Though forswearing industrial action, it continued to oppose the ruling by re-referring the question to arbitration. Thus in January 1917, the Committee on Production ruled that the system ought to be experimented with for three months, after which the question might be raised again<sup>48</sup>. Indeed it was, and at the third time of asking, an arbitration award, rejecting the premium bonus system and affirming the piece-work system of payment by results, was issued by Sheriff Mackenzie<sup>49</sup>.

One cannot, however, disentangle the above "wages" questions from the matter of job control. Implicit, and occasionally explicit, in many munitions workers' complaints over alterations of wage rates, was the objection to employers' claims to deploy labour as they thought fit. This assertive demand had, of course, always been offensive to those craftsmen who perceived threats to their "property" rights in their jobs both from employers and from the unskilled. The tradition of workshop autonomy, the product of years of class struggle, had succeeded in pushing back the frontiers of control in the face of employers' competing property rights over the management of their staff, rights enshrined in the law of master and servant. Some skilled munitions workers, however, now saw wartime exigencies as a pretext used by employers to undermine craft controls. Indeed, the Munitions Act, even if nestling peacefully on the statute book, was the symbol of this counter-assault. Held in terrorem over the heads

<sup>47</sup>Ibid., September 1916, p 345. Scott's shipbuilding yard at Greenock had already set the pattern for its sheet-iron employees, while at Dalmuir, the system was approved by the engineers in the ASE. Both innovations were the result of arbitration decisions by Lynden Macassey. See ibid., June 1916, p 228.

<sup>48</sup>Ibid., February 1917, p 86.

<sup>49</sup>Ibid., July 1917, p 274.



of workers, the latter might be intimidated into meek compliance. Yet a critical quality about the mobilisation of such a law is the uncertain or delaying effect which it might have on those wishing to take controversial action, whether that be strike action by workers (for it is impossible to say how many strikes were prevented by the Act's looming presence<sup>50</sup>) or whether it even be a contentious alteration to working conditions by employers, which in turn might provoke an effective union complaint to the tribunal. So the paradoxical position might be reached that a measure vilified by trade unionists at the local level is nonetheless invoked by them in an attempt to hold back or overturn those very developments, hostile workshop changes, which the Act itself symbolised. Whether or not this implied that law was relatively autonomous, yet at the very least, resort to the Act might concentrate management's mind wonderfully to justify the steps taken. It might delay their implementation. It might indeed forbid them as an infringement of the law. The point is that resort to the law, as distinct from reliance on its mere brooding presence, sometimes led to unpredictable results. An act perceived by both workers and management alike (not wholly accurately) as embodying managerial prerogatives, did not always work accordingly. And this was because they misunderstood its purpose, which was to uphold managerial prerogatives but only if this accorded with the national interest. And that national interest, as we have stressed, was one built on corporatist principles which repudiated the selfish and competitive spirit, if this threatened bureaucratic objectives. The tribunal chairmen knew this. They were cognizant with the problems of labour supply and of the level of munitions

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<sup>50</sup>On ministry beliefs concerning this question, see chapter twelve (infra).

output, and therefore some of their judgments upheld managerial decisions designed to reach given production targets. Yet they were also aware that a dissatisfied labour force was of little assistance to the national interest if output fell, or was not increased, as a consequence. Since Clydeside registered the highest level of unrest in the country, it is not unexpected that the Glasgow tribunal enforced the Munitions Act with a pragmatism possibly unmatched in other districts<sup>51</sup>. Thus the outcome of a tribunal hearing could never be predicted with any certainty. It was therefore worthwhile trade unionists invoking the Act. Since its psychological presence had emboldened managers and foremen on the shop floor. in any case, there was little to lose, and possibly much to gain. It was part of the fabric of the wage negotiating and job control landscape. It would therefore be foolish, indeed futile, to ignore it. Thus collective bargaining by litigation was inaugurated<sup>52</sup>.

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<sup>51</sup> Since there were specific reasons for the removal of the tribunal chairmen in March 1916, it does not follow that the Ministry of Munitions itself disapproved of the relatively accommodating legal regime in Glasgow.

<sup>52</sup> For the prolonged efforts of the ASE to force the Glasgow and South-Western Railway Company, based in Kilmarnock, to bring its journey-men's and improvers' rates into line with that prevailing in the district, see Glasgow Herald, September 6, 1915; ASE, Monthly Journal and Report, November 1915, p 89; ibid., December 1915, p 38; ibid., January 1916, p 37 (journeyman's leaving certificate application); Glasgow Herald, October 7, 14, 1915 (journeyman's Small Debt Court action, seeking compensation for the loss of wages caused by the company's refusal to grant a leaving certificate); ibid., September 6, 1915 (improvers' leaving certificate applications); Labour Gazette, December 1915, p 465; ibid., November 1916; ASE, Monthly Journal and Report, August 1916, p 21; ibid., October 1917, p 18 (national wage award to railway engineers); Kilmarnock District Engineering Employers Association, Minute Book No.1, September 23, 1915; ibid., January 17, 22, March 8, 1916; ASE, Monthly Journal and Report, January 1916, p 37 (local bargaining pressure). The episode is a further example of the intricate interplay between collective bargaining and litigation, though it seems likely that in the case of the improvers, roles were reversed in the sense that the legal proceedings may have stimulated the wage demand, rather than vice-versa.



### B. Munitions Workers as Offenders

Earlier in the chapter, the point was made that munitions workers were prepared to break the law in order to bring their grievances to the notice of the employer or to the authorities. In such instances, no doubt they would prefer to have attained their objectives without facing a subsequent prosecution for unlawfully striking or for disobeying a lawful order, or whatever. However, we must assume that by taking industrial action they were aware that such a prosecution was a possibility but that, nonetheless, it was a risk they were prepared to take in an effort to cast the spotlight on their grievances. Again, there was no certainty that such steps would bear fruit, but this was in the nature of the tactics of bluffs, threats and the application of pressure at different points, including the tribunal, employed in such episodes.

One of the very earliest cases heard in Glasgow is a useful illustration of the "pursuit of right" quality of some of the cases. In such incidents, the wrongdoers undertake their unlawful action in order to draw attention to what they consider are legitimate claims which the employer is duty-bound to meet. By breaking the law, they are thereby vindicating a right to which they believe they are entitled, and of which the public, or the Ministry of Munitions, ought to be apprised.

The facts were that 24 men employed by a firm of Paisley coachbuilders, Charles Glasgow & Co., had gone on strike on July 24, 1915, in pursuit of higher wages which they claimed had been awarded to them by arbitration<sup>53</sup>. The award in fact applied to the Glasgow district and the question arose whether the employers were a country shop. Other firms in Paisley had

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<sup>53</sup>Glasgow Herald, August 6, 1915. According to the Woman's Dreadnought, August 14, 1915, p 298, only 16 appeared in court. Cf., Solicitors' Journal, Vol. 59, 1915, p 696.

consented to grant the award, but the Board of Trade initially declined to intervene. So the men struck without adequate notice and were eventually prosecuted before Professor Gloag at Glasgow on August 5. While a number of the accused were found guilty and fined 5/- each or 5 days in prison, and the charge against another group was found not proven<sup>54</sup>, it seems that the applicability of the award itself was not actually resolved at the hearing. Nonetheless, the men's industrial action, allied to the resolve of their union, the United Kingdom Society of Coach Makers, to pursue the matter further<sup>55</sup>, sufficiently persuaded the Board of Trade to take their complaint seriously. Lynden Macassey was asked to arbitrate and issued his award at the end of October, fully justifying the men's argument that Glasgow rates, in accordance with the Fair Wages Resolution<sup>56</sup>, were payable<sup>57</sup>. Direct action, though prohibited by law, was perceived clearly by the men as a justifiable step to prod the authorities and the employer to perform their constitutional duty. Not only did the coach-builders believe in the justice of their action, but the subsequent decision of the

<sup>54</sup> Conceivably, a finding of not proven would have been incompetent in England. The sentence of a fine or imprisonment, as distinct from imprisonment in default of payment, was unusual. See comments in MUN5/353/349/1, op.cit.

<sup>55</sup> The local union official, Joseph Compton, travelled to the Manchester headquarters of the union to discuss a possible appeal, though no relevant legal machinery for appeals in fact existed at the time. See Glasgow Herald, August 10, 1915.

<sup>56</sup> For the Fair Wages Resolution during the war see, for example, Wolfe, op.cit., pp 238-42; Brian Bercusson, Fair Wages Resolutions (London: Mansell, 1978), pp 142-56; OHMM, Vol. V, Part I, pp 35-6, 91-8.

<sup>57</sup> Labour Gazette, November 1915, p 425. The employer, Charles Glasgow, was a "typical employer, with whom Trade Unionists are unpopular". See Forward, August 14, 1915. He was also an extremely stubborn one. In another case, his refusal to release a youth for the Army angered the tribunal chairman, Cmdr. Gibson, who had been told by him that the youth had been recruited by the firm before the war. Gibson's response was to accuse him of selfish behaviour. "You want to take advantage of an agreement made in January 1914", he told him, "to hold a man against his services to his nation". See AIMS, Monthly Report, January 1916, p 250. Here is a clear articulation of corporatist sentiment.



Board of Trade undoubtedly vindicated their position. As with the South Wales miners the previous month, crime paid.

An instance similar to that involving the Paisley coach-builders concerned nine labourers in a Clydeside foundry whose illegal actions were also clearly directed towards forcing a simmering grievance to a head<sup>58</sup>. They had taken part in a strike for two days, which had resulted in a complete stoppage of the works. There had been earlier an award by the Committee on Production, but the men's employer had persistently delayed implementing it on the ground that he was still seeking clarification of its applicability to his establishment. The men themselves were in no doubt as to their entitlement. As their solicitor, David Cook, explained to the tribunal<sup>59</sup>,

"Time went on, and although overtures were made, the men were always put off. They did not get the  $\frac{1}{4}$ d, and then they did what they ought not to have done - went on strike and forced the question ... He had to tender a sincere apology for them, and to say that, so far as they were concerned, such a thing would not occur again."

Their manager also added that he was "pleased at the attitude the men had now taken up", and was therefore willing to support their plea for leniency. Whether his sympathy extended to meeting their claim cannot, however, be discovered.

The hearing itself took place in the midst of the deportation strike prosecutions, and Sheriff Fyfe could scarcely resist the opportunity to point up the contrast between these men's attitudes and that of those involved in the deportation strikes. Indeed he was positively glowing at the spectacle before him of abject apologies and humble promises that

<sup>58</sup> Glasgow Herald, April 6, 1916.

<sup>59</sup> Ibid. Two of the men were represented by Ben Smith, the district official of the National Amalgamated Union of Labourers.

the men's misconduct would not be repeated. The tribunal, he observed<sup>60</sup>,

"... was of the opinion that this was a refreshingly unique situation. Instead of taking up the attitude which unfortunately the Clyde district had not been unfamiliar with - the attitude that they were entitled to go on strike - the men had frankly admitted that they had made a mistake."

As a result of their contrition, he was prepared to release the men with an admonition. While no evidence on the point exists, it is not unreasonable to assume that the men's action might have expedited an authoritative interpretation of the Committee on Production's award, given that the Ministry of Munitions and the Board of Trade had seen the men's patience exhausted once. Moreover an admonition was hardly a deterrent, even though Fyfe had commented that he "would be sorry if that leniency was misunderstood". Thus it is questionable whether the labourers had indeed recognized their "mistake" as Fyfe assumed. It is more probable that they drew the opposite conclusion from the incident, and conceived of the strike as a necessary device in the repertoire of tactics at their disposal.

The final example in this section involved what the Glasgow Herald<sup>61</sup> described as a "curious, Clyde dispute" involving 24 electricians at the shipyard of Messrs. Alexander Stephen & Sons, Linthouse. According to the firm's chief electrician, Henry Bremner, he had asked the men to work until 9 o'clock one morning just before Christmas 1915 but that he did not propose to pay them for the tea interval. In response, the men refused to work after 7.30 unless such payment was made. An impasse developed and the men remained unmoved by Bremner's threat to "put their names before the Munitions Tribunal". He explained to the tribunal that the men's demand

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<sup>60</sup>Ibid.

<sup>61</sup>Ibid., January 13, 1916.



was contrary to the practice of the yard but that the men involved were conscientious workers merely complying with union instructions. Moreover he conceded, on cross-examination by the ETU's full-time official, Stewart, that the half-hour tea interval had previously been paid and that the engineers were still being paid for this period. "But", he added, "we are now dealing with the electrical department".

When he came to address the tribunal, Stewart agreed that the question was one for arbitration, but that the appropriate meeting between his union and the employers' federation had not yet been arranged. However, the whole issue was now being brought before arbitration, (no doubt hurried along by the industrial action). Therefore if the tribunal were to impose fines on the men for having disobeyed "lawful orders", it would be because the men had complied with union instructions. The case, he concluded, ought to be dismissed until the dispute was settled (by which time, he carefully omitted to add, the prosecution would be a dead issue).

Stewart's argument was not, however, accepted by the chairman, James Andrew. The tribunal could not possibly ignore the men's breach in the expectation that arbitration would ensue.

"That course was still open to them, but it would never do for the Court to let them off until they chose to apply for arbitration."

Probably in view of the union's instructions, a modified penalty of 10/- was imposed. One implication of the decision was, of course, that compliance with militant union instructions was no defence and that a rank-and-file revolt for moderation would have obtained the approval of the tribunal. Such was the confusion sown by legal intervention in industrial relations, for the boot was habitually on the other foot during the war.

Nonetheless, in what respects the dispute ought to have been labelled "curious" by the local newspaper is not immediately apparent. The union

was clearly intent, on the surface at least, of resurrecting an old practice which had gradually been eroded by the employers, probably before the advent of the Munitions Act. Otherwise one would expect the union to have complained that a change in working practices which failed to meet the requirements of Schedule II to the Act in respect to recording the change, had occurred. But no such complaint arose.

A more machiavellian interpretation is that the claim was connected with the campaign by the Electricians' Trade Union to obtain recognition by the CSA of its working rules with employers. In October 1915, the ETU had requested a meeting with the CSA to consider the adoption by the Association of its working card, which presumably would have included provisions relating to payments for meal breaks. The union's request was, however, politely refused as the CSA "has no agreed upon working rules with any Society". It therefore "cannot adopt or favourable entertain" the electricians' working card<sup>62</sup>. The matter thus dragged on for months, and was eventually referred to arbitration where Sheriff A.J. Louttit-Laing of Aberdeen finally ruled that, contrary to the employers' submission, the time was opportune for a consideration of general working rules<sup>63</sup>.

If the dispute at Alexander Stephen & Sons was not a purely domestic matter, and the role of the union together with its strict instruction to its members suggest that a matter of important principle was at stake, then the incident perhaps signifies an attempt by the union to force the broader issue through the instrumentality of a narrower one. In this analysis, the tea interval dispute would lead to arbitration, where, in Stewart's words, the "whole question", including the general working rules, might be opened up. Since the union eventually prised from the CSA a reluctant commitment

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<sup>62</sup>CSA, Minute Book No. 9, October 4, 1915.

<sup>63</sup>Ibid., July 21, 1916; Labour Gazette, July 1916, p 267.



to arbitration on the works rules, the tea interval issue, as a catalyst, became redundant in any case. If this analysis is correct, then it exemplifies once more the way in which a deliberate breach of the law by one party might be construed not as a "mindless" flouting of the law of the land, but as a carefully planned attempt to mobilise the legal process in order to jog the other side into action to remedy the offender's grievance. Though perhaps speculative or circumstantial, such an interpretation remains appealing; and the dispute may not have been so curious after all.

### Conclusion

The period covered by the above examples, that is, from about August 1915 to the Spring of 1916, corresponds, more or less, to the period when the Committee on Production tended to refuse wage advances, much to the chagrin of the trade unions<sup>64</sup>. In so doing, it was responding to the government's communication (or directive) to the Committee that in the interests of financial stringency, any further advances other than those falling automatically from existing agreements, should be strictly confined to the necessary adjustment of local conditions<sup>65</sup>. In the light of this policy, it would be natural for trade unions to turn to other devices in order to procure wage increases. Thus the lodging of leaving certificate applications with the munitions tribunal might be considered or a course of industrial action embarked upon. Indeed the minimal deterrent effect of a prosecution track record which showed that the number of workers convicted of illegal striking up till July 1916 was just over one-fifth

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<sup>64</sup>Wolfe, op.cit., p 245.

<sup>65</sup>Lord Amulree, Industrial Arbitration in Great Britain (Oxford: University Press, 1929) p 140; Ducksoo Chang, British Methods of Industrial Peace (New York: Columbia University Press, 1936) pp 110-1.

of one per cent of those actually participating in such strikes<sup>66</sup> and that the amount of fines paid amounted to less than one-sixteenth of one per cent of the statutory maximum<sup>67</sup> no doubt directly encouraged the atmosphere of disregard for the law. Though there is much of the "chicken and egg" conundrum in such a suggestion, nonetheless, in passing, it seems fairly clear that the munitions tribunal cases involving direct action are merely the tip of the iceberg of industrial lawlessness.

However, while in 1915 and 1916 most claims to the Committee on Production were for cost of living district advances in engineering and foundry work<sup>68</sup>, claims were also frequently submitted dealing with a large number of intricate questions concerning particular firms<sup>69</sup>. For example, matters concerning piece rates and incentive schemes, hours of work, overtime, holiday payments, weekend work and codes of working rules became the subject of arbitration. The Committee on Production, in particular, thus enjoyed a dual function, assessing both general claims which, during late 1915 and early 1916, would commonly be rejected, and also more specific questions dealing with actual differences between employers and their own labour forces<sup>70</sup>.

Of course, not all differences required to go beyond the voluntary machinery, though in the majority of cases, those reported to the Board of

<sup>66</sup> Milton Moses, "Compulsory Arbitration in Great Britain During the War", Journal of Political Economy, Vol. 26, 1918, at pp 896-7.

<sup>67</sup> I.G. Sharp, Industrial Conciliation and Arbitration in Great Britain (London: Allen & Unwin, 1950) p 318.

<sup>68</sup> Ibid., p 319.

<sup>69</sup> The monthly issues of the Labour Gazette provide summaries. More detailed reports are collected in the Twelfth Report of Proceedings under the Conciliation Act 1896 for 1914-1918, P.P. 1919 (185), XIII.

<sup>70</sup> Amulree, op.cit., pp 143-4.



Trade had already gone through the voluntary procedure<sup>71</sup>. On the other hand, it has been claimed that<sup>72</sup>,

"Trade unions found compulsory arbitration more expeditious in settling disputes than the ordinary conciliation board procedure. It was much quicker to report differences under the Munitions Acts at an early stage and get an award which was legally enforceable for a definite period of time ... than to spend much time with employers in negotiations which might result in a deadlock leading to a stoppage."

Though such observations are perhaps less valid for the period considered above, and indeed contradict the evidence of trade union criticism of those frustrating delays attaching to compulsory arbitration proceedings<sup>73</sup>, which in fact compelled the government to amend the Munitions Act in 1916, and again in 1917<sup>74</sup>, a legally binding award might at least reassert the authority of official trade unionism against possible rank-and-file rebellion. It would, of course, also discourage employers in most cases from any thoughts of resistance to such awards.

In fact, however, matters were never that simple, as the examples in this chapter of munitions tribunal proceedings to enforce or to press for awards vividly reveal. Employers were still able to oppose awards in court by claiming, as in the foundry labourers' case, that an award was inapplicable to their establishment, a claim which section 5 of the 1917 Act, on the extension of awards to non-federated firms, rendered more difficult to sustain. Moreover, the rapid pace of technological change, together with the intricate varieties of piece work arrangements might

<sup>71</sup>Chang, op.cit., p 78.

<sup>72</sup>Ibid., p 91.

<sup>73</sup>For examples of such criticisms, see the Trade Union Worker, February 1916, p 3; ibid., April 1916, p 8.

<sup>74</sup>The specific changes are noted in Chang, op.cit., p 75.

make compulsory arbitration an unwieldy method of resolving such disputes. Trade unionists might also be reluctant to refer a claim to arbitration, in the expectation that their claim would be turned down. This suspicion probably applied in the case of the Beardmore caulkers whose preference evidently was to exploit their market scarcity by a legal side-wind.

But in one further, crucial respect, the matter of compulsory arbitration and the determination of employers to resist claims such as those of the caulkers or the Beardmore sheet-iron workers or the Alexander Stephen electricians is potentially puzzling. This is that it became government policy to permit the employer to pass on to the contracting department any increase in his costs due to an increase in wages. Contract variation was introduced in February 1916 and, in consequence,

"The result was a revolutionary change in the relations of employers and their wage earners. The conflict of interests, of which strikes are a symptom, was no longer between employer and labour but between labour and the employer's employer, the Government."<sup>75</sup>

Thus the employer's profit was independent of the wages actually paid, and the strength of his resistance to wage claims might be expected to diminish accordingly. Moreover, employers were desperate to attract or retain labour, an objective with which the contracting departments no doubt sympathised, to the consternation of the labour regulation department of the Ministry of Munitions, acutely aware of the concept of relative deprivation. Why, then, should employers continue to oppose wage claims with such vehemence that their employees were eventually driven to take illegal action or to lodge leaving certificate applications to press their claims? A number of possible explanations might be advanced. First, some of the employers in question might not actually be government contractors,

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<sup>75</sup>Clay, op.cit., p 48.



even though technically engaged on "munitions work"; for example, carting firms with contracts with companies which were government contractors. Second, other firms might not be the direct employers of those "employees" whose claims they were resisting. For example, it was common in the shipyards for a ganger to negotiate a rate with the employer, and it would be the ganger who would actually pay the members of his squad. Thus the shipyard might be unable to charge the contracting department for the wages, or increases, paid to the squad because the members were not the firm's employees, while the ganger himself would, technically, be self-employed. Nonetheless, the shipyard was not excused from making a lump payment to the ganger which he in turn could distribute, as agreed, among his squad. It was therefore in the shipyard's interest to minimise the wage payments made by it, irrespective of destination, wherever the subcontracting system existed. Cases of this nature were not uncommon from 1916 onwards. Such examples suggest that the variable contract terms negotiated with the purchasing departments might be inapplicable to many of the diverse detailed and unique claims for wage adjustments continually being submitted. In other words, the scheme was simply too elegant to be fully workable.

A third possibility is the employer's fear that particular wage grievances, for example, the proper rate for improvers just out of their apprenticeship, were matters which it was impossible to confine to the duration of the war. Thus the munitions tribunal ruling on whether a leaving certificate was justified in the case of an engineering improver demanding ASE-approved rates rather than the rate set by the employers' association, was not seen as a decision affecting the level of war bonus, and thus leaving intact, in theory at least, the basic rate. Such a

decision constituted a point of principle over which the two sides were deeply divided and which would be seen as a precedent for the post-war era.

Finally, there is the view expressed earlier in the chapter that the issues falling under the umbrella of collective bargaining by litigation, while self-evidently concerned with questions of wages, additionally raised issues of job control. Most notably this involved demarcation, the deployment of labour and the introduction of incentive payment schemes. But as is seen from other chapters, the recruitment of non-unionists or of female labour or of lesser skilled employees occasionally generated legal controversy of a kind which, though wrapped up in a claim ostensibly displaying a wage grievance, disclosed, on closer inspection, a deeper schism.

We may therefore summarise our argument so far. In the first legislative phase, during which virtually no general awards were granted by the Committee on Production, employers, bolstered by the unions' self-denying ordinance, by the leaving certificate scheme and by the provision requiring ministry approval for alterations in wage rates, could adopt a more dismissive attitude to legitimate wage claims. This meant that trade unionists had to fight that much harder, had to become more imaginative and resourceful, more pragmatic and opportunist in the alternate uses of direct industrial action and direct legal action before the unpopular munitions tribunals in order to protect their flanks and to secure improvements which at least matched the rise in the cost of living. Yet even with the advent of the "cost plus" system of government contracting, employers continued to dig in their heels, perhaps, as Lord Amulree engagingly put it, "either from habit or from a regard to general public considerations and the finances of the State"<sup>76</sup>. More plausibly, it was

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<sup>76</sup>Amulree, op.cit., p 144.



because they recognized that at stake were not simply short-term wage disputes, but more fundamental differences over the scope of managerial prerogative. As a result, the class struggle in the munitions tribunals continued unabated into the subsequent phases of the war.

We began by noting that the pre-war picture of wage regulation disclosed monumental complexities. In the engineering industry the position was described by the Coles as "chaotic". However, they continued, writing in 1918, "This chaos continued into the war period"<sup>79</sup>. It is against this incoherent background that one must seek to understand the tactics of those trade unionists who, hampered by a wartime state institution, the Munitions Act, from exploiting their market superiority, sought to stand that institution on its head. Thus in fact if not in form, the munitions tribunals were seen to offer a unique opportunity, albeit born of desperation, to fashion a new instrument of wage determination during the war. The progress of this strategy throughout the rest of the war is plotted in chapter seven.

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<sup>79</sup>G.D.H. and M.I. Cole, The Regulation of Wages During and After the War (London: Labour Research Department, 1918) p 5.

CHAPTER SIXThe Other Clyde "Deportations": The Case  
of the Tribunal Chairmen, March 1916Introduction

In articulating the theoretical framework within which to locate the application of wartime labour regulation, we emphasised in chapter one that corporatism presupposed a legal regime wholly subordinated to the pursuit of centrally determined policy objectives. This implied an approach to legal construction which recognized the legitimacy solely of the executive's interpretation of the law to the exclusion of any alternative construction. Moreover, to the extent that judicial officers retained discretion in decision-making, this, too, was to be exercised in accordance with executive wishes and priorities. The corollary of such an approach to judicial interpretation and enforcement of legislation was that the classical liberal doctrine of the independence of the judiciary was suspended for the duration. The doctrine of the separation of powers among the legislature, executive and judiciary was thus to be emasculated so far as the Munitions Acts were concerned<sup>1</sup>. As a result, those Glasgow tribunal chairmen who considered themselves to be independent upholders of the rule of law and privileged to issue judgments "without fear or favour" were sadly deluded.

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<sup>1</sup> That the Diceyan doctrine of the separation of powers and the rule of law constituted an ideological myth during the classical, neo-classical and "late" capitalist phases is itself a fruitful source of debate which cannot be explored here. Modern literature on the subject is too vast to mention, much of it inspired by E.P. Thompson's brief observations in his Whigs and Hunters (Harmondsworth: Peregrine Books, 1977) pp 258-69.



Whether the act of delivering a decision of which the Ministry of Munitions disapproved was a greater crime in the eyes of the executive than the failure of Glasgow chairmen to maintain order in the tribunal is a debatable point. Tribunal disorder was experienced elsewhere in the country, but did not result in the replacement of the chairmen involved. Moreover, Sheriff Fyfe himself had presided over hearings which were far from tranquil. Yet unlike Gloag, he did not shrink from imposing severe punishments, though they remained, of course, within the statutorily prescribed tariff. No doubt the ministry reasoned that a "hard man" (a type perhaps not unknown to a city like Glasgow?) would be more likely to triumph over disorder than a manifestly weak one. Thus Gibson, Andrew and Gloag were all removed from their chairmanships. In the case of the first two, the issue of policy differences, and in the case of Gloag, the matter of personality differences, might therefore be identified as the causes. But just as the deported shop stewards became the victims of a centralized state élite because of the challenge which they posed to the assumptions underpinning that bureaucracy, so too did the tribunal chairmen become victims of that same élite for having themselves asserted their own brand of autonomy.

#### The Hounding of Professor Gloag

The transformation of the tribunal hearings into running exchanges of biting ferocity which we noted in chapter four rapidly became known to even the highest authority within the Ministry of Munitions. Thus early in August 1915, Lloyd George raised the matter of the Fairfield coppersmiths' prosecution at a meeting with the shipbuilding employers. He told the secretary of the federation, Thomas Biggart, that<sup>2</sup>,

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<sup>2</sup>MUN5/48/300/9, op.cit., for this and subsequent quotes.

"I thought that prosecution in Scotland was very unsatisfactory. I read a report of it, and I was very distressed about it."

Biggart, who had attended the tribunal hearing, complained that Gloag had allowed too much latitude to the men and their representatives.

Thus he had,

"... allowed the Union's representatives to pop up and down. There were also 30 or 40 men sitting in the front seat of the Court, and he allowed at least half-a-dozen of them to begin to raise points and ask questions, and of course the matter got out of hand."

However, it was not merely the conduct of the proceedings which offended Biggart who, as secretary also of the Clyde Shipbuilders' Association, had had many years experience negotiating with the local shipbuilding unions. It was that Gloag's terms for a resumption of work involving the imposition of a derisory penalty of just half-a-crown, resort to the status quo and reference to the Board of Trade,

"... did not commend themselves to those who felt that if the Act was to get a chance, such a glaring case ought to be dealt with in some decisive manner ... [and] instead of narrating his view of the action which the men had taken, he intimated his half-a-crown fine, and then passed on to a few general remarks."

Biggart, like Llewellyn Smith, Beveridge and Rey at the Ministry of Munitions<sup>3</sup>, clearly believed that a policy of bold prosecutions conducted both by the ministry and by employers individually would deter sufficiently other munitions workers from undertaking strike action and from committing works offences, but only if the initial prosecutions

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<sup>3</sup>José Harris, William Beveridge: A Biography, op.cit., pp 212-3.



could be widely shown to be successful<sup>4</sup>. The demonstrative effect of this Fairfield prosecution, however, could only be to encourage further rebelliousness. Though Biggart considered that the professor's performances at subsequent hearings, including the Lobnitz shipyard holders-on case, were adequate, there was no denying that Gloag's copybook was now blotted and that a careful watch over his handling of hearings was being maintained by the local ministry officials.

However, if, according to the Forward<sup>5</sup>, "the Capitalist class are furious at the result of the trial", the strongest condemnation emanating from the local ministry official, Paterson, was reserved for Gloag's handling of the Bridges case. This was the case of the Weir's shop steward charged with molesting a fellow-worker and brought before the tribunal at the end of October 1915<sup>6</sup>. What had actually occurred between Bridges and the worker is not clear, though the 330 men employed in Bridges' department at Weir's believed that all he had done was to ask the worker to show him his union card in accordance with custom. The case was clearly perceived, therefore, as one of victimization against

<sup>4</sup>Biggart's legal background may, however, have led him to over-estimate the efficacy of the law. However, as secretary of a number of employers' associations in Scotland, including the engineers, shipbuilders, copper-smiths, brassfounders, dry dock owners, and structural engineers, the limits of the law ought to have been more apparent to him. The combination of Biggart's legal and industrial relations activity was no doubt aided by the fact that his firm, Biggart, Lumsden & Co. occupied the same building as the employers' associations. Despite amalgamations and other changes in organization, this remains the case to this day. For biographical details of Biggart, see the Bailie, Vol. 106, No. 2751, July 1, 1925, pp 3-4; and Eric Wigham, The Power to Manage, op.cit., pp 46-7. During the war, he also acted for an organization entitled the Association of Controlled Establishments, set up in 1916 to seek the minimisation of liability for excess profits duty. See Glasgow Herald, July 6, 1916.

<sup>5</sup>Forward, August 7, 1915, commenting on the Glasgow Herald editorial of August 3.

<sup>6</sup>Hinton, The First Shop Stewards' Movement, op.cit., pp 118-9; Glasgow Herald, October 26, 1915; Forward, October 30, 1915.

a shop steward; and in this combative mood, the rank and file descended on the tribunal clearly intent on disruption. The sober tones of the Glasgow Herald offer one version of events. Thus, it reported that<sup>7</sup>,

"The business ... was conducted with some difficulty owing to the unruly disposition of a number of workmen who attended the court. They frequently indulged in demonstrations of approval or disapproval of the proceedings, and at times their conduct was so irregular that the intervention of the two police officers who were in attendance was necessary. The disturbances were not of a serious nature and the persuasion of a constable sufficed to restore order ..."

The version given by the local ministry official, writing to Wolff, is, however, more dramatic. Thus, Paterson informed the Ministry of Munitions in London that<sup>8</sup>,

"When the Lumgair [i.e. Bridges] case was announced, absolute pandemonium reigned for several minutes. On at least half a dozen occasions, the proceedings were so riotous as to have justified the clearing of the court, but all that happened was a feeble attempt to call for order."

But this was not all. A number of leaving certificate applications as well as further prosecutions were set down for the same hearing,

"... and each workman as he came forward to the bar was loudly applauded by his fellow workmen at the back of the hall. The employers, managers and time-keepers who attended to give evidence were greeted with booing and hissing. A similar outburst took place when any workman was refused his certificate, and in the cases in which certificates were granted, the men loudly cheered."<sup>9</sup>

This was too much for the upright dignitaries of the tribunal. "You are only delaying the Court with that nonsense", pleaded Thomas Wilson, the tribunal clerk, while Gloag himself threatened to have a riveter committed to gaol if he did not cease interrupting the evidence being presented.

<sup>7</sup>Glasgow Herald, October 26, 1915.

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LAB2/47/MT107/1, op.cit., Paterson to Wolff, October 26, 1915.

<sup>9</sup>Ibid.



The spectacle at the conclusion of the hearing, especially the uproar following the announcement of the abandonment of the charges against Bridges, left a deep impression on Paterson. He was quick to allocate blame for the chaos, and complained that<sup>10</sup>,

"This is allowed to happen with only one chairman of the munitions tribunals in the district, viz. Professor Gloag, who whatever his ability as an advocate and Professor of Scots Law in the Glasgow University is of such a highly strung, sensitive, self-conscious, nervous and mild disposition that he is constitutionally unfit to occupy the bench in any court that is likely to be attended from time to time by groups of unruly workmen. Yesterday afternoon was quite the worst court we have had yet, but there have been others presided over by the same chairman which were allowed to be conducted in a most undignified manner."

Obviously, the coppersmiths' case was the other prime example. Part of the trouble was in fact Gloag's own physical shortcomings in the form of his pronounced lisp. While, as we noted in chapter three, he did not become an object of ridicule on this account, his speech defect did allow workers to exploit the situation. Thus, a number of the coppersmiths alleged that they were unable to hear his judgment and asked him to repeat it. This he did both loudly and deliberately, but this served only to heighten the sense of tragi-comedy and encouraged the men to bawl back at him in a similar manner<sup>11</sup>.

Even without this added complication, Gloag's capacity for the job was clearly exhausted. Paterson therefore concluded<sup>12</sup>,

"I accordingly recommend that some way be found at once to arrange that Professor Gloag does not sit as Chairman of any more munitions tribunals. Probably, the only way is to terminate his appointment as a Chairman; if so, I am afraid that course must be taken."

<sup>10</sup>Ibid. Italics in original.

<sup>11</sup>Forward, October 30, 1915.

<sup>12</sup>LAB2/47/MT107/1, op.cit.

With this suggestion, Wolff concurred. But one problem was how to ease Gloag out of office without generating suspicion among munitions workers that he was being punished for having imposed light sentences in strike prosecutions, as against the heavier penalties prescribed by Sheriff Fyfe. A resignation and not a dismissal was obviously preferable. Wolff therefore suggested to Beveridge that as a dual chairman, he, Gloag, ought to be relieved of the burden of the general tribunal which dealt with the strike cases.

"He will no doubt see through this statement and will in all probability resign both offices which, except for the impression it might create among the workmen, would, in itself, be a satisfactory conclusion. I could imagine, however, that secretly he could not altogether object to be relieved of a difficult office."<sup>13</sup>

Beveridge told much the same thing to Llewellyn Smith some three weeks later, adding that Gloag's removal from both tribunals was necessary since the local tribunals also dealt with "important" questions. Moreover, another chairman, probably Gibson, had urged Paterson to withdraw Gloag; otherwise he would resign. In the end, the same difficulty of how to administer the coup de grâce troubled the ministry officials.

"I have considered what would be the gentlest way of dispensing with him but can find no subterfuge. We cannot say there is not enough work because we may very well have to find another Chairman if we dispense with him,"

wrote Beveridge<sup>14</sup>. They might suggest to Gloag that a regular, practising lawyer was required. But whatever explanation was given, it was "better to write and say that on the whole the work is not well suited to him".

Two draft letters were accordingly prepared, apparently by Keenlyside, but never sent. One merely asked him how best to rectify

<sup>13</sup>Ibid., Wolff to Beveridge, October 27, 1915.

<sup>14</sup>Ibid., Beveridge to Llewellyn Smith, November 17, 1915.



the disturbances, while no doubt hoping he would take the hint and resign. The second was polite but firm, and read<sup>15</sup>,

"I understand that you have been experiencing some difficulty owing to the pressure of a disorderly element among those who attend the sittings of your Tribunals. I fully realise that the position of Munitions Tribunals in this regard is not an easy one. They have behind them no historic tradition to inspire respect. They have at hand no well recognized means of enforcing it. Moreover the Act under which the Tribunals are consulted is viewed in some quarters with suspicion and even with hostility. In these circumstances a heavy burden is thrown upon the Chairman who not only has to decide new problems of great difficulty, but has at the same time to contend with disturbing factors which would be quite foreign in an ordinary Court of Law. The spirit of unrest is apparently prevalent in the Clyde area ... Open manifestations of disrespect for the tribunals (such as have occurred, I am told, in Glasgow) may do much to counteract the salutary effect upon the public of the good work which they undoubtedly perform.

It is on these grounds that we have come to the conclusion that the Chairman of a busy Tribunal - particularly in a district such as Glasgow - should have considerable experience of the exercise of disciplinary powers. I therefore venture to suggest, though with great reluctance, that you may think it well, in the light of these considerations, to resign your appointment as Chairman ..."

Of course, insisted the ministry, no criticism of Gloag's legal qualifications, "for which we in the department have the highest respect", was thereby implied. Still less need they deny the "existence of any suspicion that your judgments have in the smallest degree been influenced by these disturbances". The reality was different. Gloag's legal qualifications pointed to his donnish character which failed to meet the ministry's dictatorial needs; while the ministry's comments on his judgments were the very opposite of the truth. They well knew that he had been intimidated in strike cases into imposing lenient penalties.

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<sup>15</sup>Ibid., Draft letter, Keenlyside (?) to Gloag, c. mid-November 1915 (?)

For some days, the matter rested while Gloag took a short vacation. On his return, however, Paterson in Glasgow resumed the campaign against him, writing to Wolff and describing his, Gloag's, performance at a local tribunal on November 29. "It does not appear", wrote Paterson<sup>16</sup>, "that he has come back in any way strengthened by his rest."

Thus he explained that the local assistant ministry prosecutor, James Matson, had had a "bad" case, with evidence clearly showing that a workman had been guilty on frequent occasions of bringing drink into a controlled establishment. Matson reported that he had heard Gloag tell the assessors that a £3 maximum fine would be appropriate. The workmen's assessor immediately protested and Gloag responded by dropping the amount to £1. The workmen's representative still shook his head and suggested 10/-.. Finally a figure of 15/- was agreed. Fortunately, wrote Paterson, the court was not a heavy one, with no particularly contentious cases. There was therefore little difficulty in keeping order. However, since the tribunal was sitting daily, he feared that awkward cases would arise in the future where further "scenes" would occur.

"If this happens", he concluded,<sup>17</sup> "I shall be greatly surprised if you do not receive at once the resignation of one of the other two chairmen, if not both."

Thus the essence of the case against Gloag was his weakness in maintaining order in the tribunal and his pusillanimity in imposing sentences. It was not that he disagreed on policy grounds with what the ministry were attempting to achieve through the tribunals. It was

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<sup>16</sup>Ibid., Paterson to Wolff, November 30, 1915.

<sup>17</sup>Ibid.



simply that he lacked the strength of character and an adequately ruthless streak to force through an unpopular policy with sufficient severity. His decisions - whether an individual had committed an ordering of work offence; whether groups of workers had, in law, participated in an unlawful strike; whether a clearance certificate had or had not been unjustifiably withheld by an employer; were not necessarily at odds with the wishes of the Ministry of Munitions.

Indeed, there is a certain irony in a previously mentioned (chapter five, supra) leaving certificate decision of Gloag's issued during the same session which heard the Bridges case<sup>18</sup>. Though the facts were disputed at the hearings of the Balfour-Macassey Commission, it seems that three riveters had been hired at the Scotstoun West yard of Barclay Curle shipbuilding company, in order to work at the company's neighbouring dry dock at Elderslie. Subsequently, the firm wished to transfer them back to the Scotstoun yard but the men adamantly refused to change sites again. Instead they applied for leaving certificates which the company withheld. When the tribunal hearing came on, the CSA, representing the employer, argued that the case involved an important point of principle, the right of an employer to transfer an employee from one department or one site to another<sup>19</sup>. Clearly, the grant or refusal of a leaving certificate by the tribunal would be seen by employer and union as determining the legitimacy of an employer's right to deploy labour as he saw fit. Thus as the Boilermakers' official, Bill Sharp, later told the Balfour-Macassey enquiry, "... a big principle, in our opinion, is established here. If the firm had

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<sup>18</sup> Glasgow Herald, October 26, 1915.

<sup>19</sup> Glasgow Herald, October 20, 1915; ASE, Monthly Journal and Report, November 1915, pp 47-8.

got away with this, they would be simply trying on with other people".<sup>20</sup> The issue of leaving certificates therefore seems almost incidental, except that this question was likely to have been one of those matters which the employers, prior to the war, might have been unable to resolve in their favour as a matter beyond dispute and negotiation. The war, or the controls vested in the Munitions Act, afforded them the opportunity, it appeared, to attain that which had been beyond their reach in peacetime. But one should not misconstrue Gloag's decision in refusing the certificates. The employers may have perceived the matter as raising the principle of managerial prerogative, and that the munitions tribunal would be a suitable forum wherein to vindicate that doctrine. But such a perception was not necessarily shared by the tribunal personnel themselves. Their criterion was the "national interest", informed with corporatist sentiments which accorded scant regard alike to the private claims of employers and of trade unionists. The tribunal's ratio decidendi in rejecting the riveters' claims did not correspond to the inference - the legitimation of managerial prerogative - which the employer would prefer to have drawn from the outcome. In this respect, Gloag was loyal to tightly drawn ministry and corporatist objectives.

Indeed, when similar cases arose in Newcastle around the same time, the tribunal granted certificates to the shipyard workers involved. Thus at Armstrong Whitworth's Elswick yard, those threatened with transfers to the company's sites at High Walker, Selby, Manchester and the Clyde district were granted their clearances; while the following month, the proposed transfer of men from Palmer's shipyard at Hebburn to the firm's site at Jarrow, fell through on the grant of their leaving certificates<sup>21</sup>.

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<sup>20</sup>MUN5/80/341/3, "Clyde Munition Workers: Minutes of Evidence", p 43.

<sup>21</sup>Glasgow Herald, November 25, 1915.



Thus on some matters, Gloag could be as harsh and uncompromising - indeed, more so - as tribunal chairmen elsewhere. It was, however, his method of suppressing conflict and his theory of deterrence which, the ministry concluded, were found wanting.

As we noted earlier, the draft letter inviting Gloag to resign was not sent. Instead, the removal was postponed pending a general review of the performances of all tribunal chairmen<sup>22</sup>. For already there had been hints of dissatisfaction with the other local tribunal chairmen, Gibson and Andrew<sup>23</sup>, while in Coventry (chapter nine, *infra*) Professor Frank Tillyard<sup>24</sup>, who held the chair of Commercial Law at Birmingham University, was also attracting adverse ministry criticism. In the event, the outcome of this initial review in early January was to confirm the removal of Gloag, though only after the passing of the forthcoming Amendment Act, but also to recommend no other changes despite Tillyard's "appalling decisions"<sup>25</sup>.

<sup>22</sup> LAB2/47/MT107/1, *op.cit.*, Wolff to Payne, December 16, 1915.

<sup>23</sup> Payne, for example, had noted that if the Ministry were to "depose" Gibson and Andrew, they would require to appoint chairmen "of an altogether different stamp", outside the sphere of Glasgow solicitors of whom Gibson and Andrew were "quite fair types". The only name suggested was George Neilson, LL.D., stipendiary-magistrate for Glasgow and a former procurator-fiscal. He was used to a large number of cases a day, with a grasp of court procedure, was "absolutely fair" and was "not at any time inclined to allow too much nonsense". It is probable that Neilson's name was suggested by Wilson. Payne's comments were undoubtedly in response to Wolff's general review of the chairmen which he completed in early January 1916. See *ibid.*, Payne to Wolff, December 28, 1915.

<sup>24</sup> Tillyard's publications included Industrial Law (1916) and The Worker and the State (1923) a version of which was published by the National Council of Labour Colleges in 1936.

<sup>25</sup> LAB2/47/MT107/1, *op.cit.*, Wolff to Beveridge, January 6, 1916. Why two professors on the tribunal list should have been singled out as especially inept might invite wild and improper speculation.

Over the next month, various permutations were put forward to fill the place to be vacated by Gloag. Sir Thomas Munro, the Clyde Dilution Commissioner, was invited to hear leaving certificate cases but declined on account of his dilution work. Fyfe intimated that Andrew and Gibson could be left to handle the "domestic" work involving leaving certificate cases, while he would take on all the prosecutions. T.F. Wilson, as we saw in chapter three, considered that any changes would invite worker criticism. Even Gibson himself wrote to Wolff on January 24 to oppose "the seeming clothing of the Tribunals with anything savouring of further judicial authority [which] would, in my humble opinion, be distasteful to the workmen and might be resented by them"<sup>26</sup>.

Gibson was certainly ambitious, suggesting that Andrew take on the leaving certificate cases while he would hear the prosecutions, a proposal which he considered his background as a magistrate justified. Indeed not only did he intimate that a post as stipendiary chairman of the Scottish tribunals would be welcome. He also later proposed in June 1917, that is, some fifteen months after his removal, that he be reappointed to the tribunal in the event that Sheriff Fyfe was appointed Sheriff-principal of Lanarkshire<sup>27</sup>. The latter was not in fact promoted, but it is an indication of Gibson's lust for office that he wrote to the ministry without evident embarrassment.

However, by the time of Gibson's letter of January 24, his own goose (and that of Andrew) was already being cooked. The whispering campaign against the two chairmen was apparently instituted by Bartellot, the Admiralty representative on the Clyde. Andrew was the

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<sup>26</sup> Ibid., Gibson to Wolff, January 24, 1916.

<sup>27</sup> Ibid., Gibson to Ministry of Munitions, June 30, 1917.



first target, though it was Gibson who was subsequently to bear the brunt of adverse ministry criticism before both chairmen were eventually removed.

James Andrew and the Barclay Curle Caulkers

Seven caulkers employed by the Barclay Curle shipyard sought leaving certificates from the firm on September 9, 1915. They alleged that the firm were attempting to reduce their rates of pay from 1/4d. to 10½d. an hour, and that by refusing certificates, the company were hoarding labour<sup>28</sup>. According to the firm, these men were employed at Elderslie Dry Dock and were the entire staff of caulkers available at the dock. They were mostly on urgent government work, which sometimes came in intermittently. As a consequence, they might be idle occasionally for short periods. It was, however, important, from a "national point of view", that the men be available when the work did come in. The firm were therefore willing to pay them the standard time rate of 10½d. an hour whether working or not. Moreover, the firm supported their case by producing a letter from Bartellot asking them to maintain under all circumstances a full staff ready to take in hand immediately any vessels arriving for urgent repairs<sup>29</sup>. Indeed Bartellot had advised that a destroyer was due to arrive that very night for repairs after a collision. "In spite of this", he complained, in reporting the case to the ministry, "the discharges were granted and the firm was left without caulkers".

Why had the tribunal given a decision, which, according to Bartellot, "in the interests of the service, should not be allowed to stand"?<sup>30</sup>

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<sup>28</sup> Glasgow Herald, September 10, 1915.

<sup>29</sup> Bev., III, 1, ff. 2-6.

<sup>30</sup> Ibid.

Bill Sharp of the Boilermakers' Society, who represented the men, told the tribunal that he could "place them in situations tomorrow" where they would be continuously employed on government work. Clearly the men wished to maximise the opportunities which a tight labour market was currently offering them and were thus not prepared to meet the company half-way by accepting a guaranteed rate. In any case, Sharp trumpeted patriotically, the men did not wish to be idle.

The employer's practice of hoarding labour by means of a refusal to grant leaving certificates was a running sore with trade unions (as we also saw in chapter five) which they later ventilated before the Balfour-Macassey Commission. Andrew presumably therefore recognized that such a practice was likely to promote widespread unrest if not nipped in the bud. He consequently granted the men's certificates and left the firm to "work out their redress by some other process". It was the sort of decision bound to infuriate employers who, in fairness, could hardly predict when urgent ship repairs would be required but who were nonetheless obliged to maintain a labour force in readiness. On the other hand, under the guise of the national interest, they were attempting to force through a reduction in wage rates under the umbrella protection of an act which purported to prohibit such changes without ministry authorization. It is symptomatic of the blinkered vision of the Admiralty representative, Bartellot, that his explicable outburst against Andrew's decision displayed no acknowledgement of the employer's provocative action.

We can see immediately that the nature of the criticism directed against Andrew differed from that levelled against Gloag. In the case of the former, a policy difference between the chairman and the ministry



arose. In Gloag's case, as we have seen, it was, rather, his inept handling of rowdy sittings.

This difference over matters of policy was most pronounced in the case of Gibson's handling of tribunal hearings. There were two main areas of dissatisfaction on the part of the ministry. First was the matter of leaving certificate applications by a number of Canadian workmen. Second was the issue of labourers' wage rates.

#### Cmdr. Gibson and the Canadian Workmen

During the war, large numbers of Canadian and American workers came over to the Clyde district to help the war effort<sup>31</sup>. While many were in receipt of wages in excess of that earned by the local workforce, as the "tuppence an hour" strike of engineers at Weir's of Cathcart had clearly shown in February 1915, many more of the overseas workers had expected higher earnings than they actually received. One agency, for example, indicated that the standard rate with overtime would bring the average weekly wage to £6. But when they found it difficult to earn half as much as this, they frequently sought jobs elsewhere<sup>32</sup>. Many of these workers were recruited on six-month contracts, at the expiry of which they sought leaving certificates in order to move elsewhere. A number of the larger employers were, however, reluctant to lose their services and so the certificates were withheld, thus requiring the workmen to resort to the tribunals. In pursuing this policy, the employers were encouraged by the ministry which felt that if a sympathetic attitude was displayed to a few overseas applicants, then hundreds of other

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<sup>31</sup>For example a large contingent of 265 mechanics from British Columbia had been recruited by George Barnes, the former general secretary of the ASE, and had arrived in Glasgow at the beginning of August 1915. See Glasgow Herald, August 3, 1915.

<sup>32</sup>OHMM, Vol. II, Part II, p 63. The case of Robert Peebles, recruited by the White Star Line for Beardmores, is probably the archetypal case. See Glasgow Herald, October 5, 1915.

Canadians would submit applications to go elsewhere. Such large-scale shifting of labour, it was considered, could hardly be beneficial to munitions production.

Eventually, these matters were ventilated in a number of significant cases, principally involving Weir's of Cathcart and Beardmore's Dalmuir works. Thus in mid-September 1915, for example, a number of American engineers at Weir's applied for leaving certificates on the completion of their six-month contracts<sup>33</sup>. The firm, which had been paying the men  $\frac{1}{2}$ d. an hour above the district rate, resented having to bear the expense of bringing the men over from the United States only to see them move elsewhere after six months. If they desired to return to America, declared the company, then the firm would not object. William Brodie, representing the men, argued, however, that despite their higher standard rate, the Americans found difficulty in supporting their dependants back home in view of the high cost of living in Glasgow. For this reason, they desired to seek better paid employment elsewhere in the U.K. In the end, the tribunal agreed to grant the certificates, though the reasoning appeared to imply that on the expiry of the contracts, the firm could not lawfully prevent the men leaving. Thus the implication for ministry policy was that even the criterion of the "national interest", in the shape of the struggle against wage drift and against labour mobility, could not impair the men's plans to leave the firm if they so desired. The fact that another 200 fellow-Americans worked at Weir's under these six-month contracts indicated, moreover, the potential damage to ministry objectives which the tribunal decision might inflict.

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<sup>33</sup>Glasgow Herald, September 17, 1915. Four days later two more Americans from Weir's received certificates from the tribunal. See ibid., September 21, 1915.



Indeed, at a third such hearing later in the same week, also involving American engineers at Weir's, the ASE district delegate, Sam Bunton, asked whether nothing could be done to prevent a repetition of such cases<sup>34</sup>. He believed there were still about 50 to be dealt with and that the company were proposing to object in every case. The chairman agreed that Weir's obstructive tactics were unhelpful given that the cases were virtually identical, but no doubt the company's posture signified deep frustration, especially at having to pay a £10 bonus to each man on the completion of his contract.

Yet, undeterred, the firm came back to the tribunal the following day to oppose the grant of certificates to a further six Americans<sup>35</sup>. They were, they said, "extremely sorry to be unable to give effect to the suggestion made at the previous day's court". They did not wish to be vexatious or to waste the tribunal's time, but they felt they had not been acting unreasonably in trying to retain the services of the men. Perhaps the message finally got through to the firm when the chairman, James Andrew, insisted that the previous decisions provided a precedent which had to be followed. For no more applications from American engineers at Weir's were entertained by the tribunal. Instead the focus of controversy turned to Beardmore's Dalmuir works where 250 American riveters had formed the Overseas Mechanic Union which had been holding meetings each week<sup>36</sup>. Their dissatisfaction had indeed begun to spill over into all departments of the works, and their grievances eventually came to a head in February 1916.

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<sup>34</sup>Ibid., September 23, 1915.

<sup>35</sup>Ibid., September 24, 1915. Interestingly, Brodie was the workmen's assessor in this case.

<sup>36</sup>MUN5/80/341/3, op.cit., pp 339-45; 363-7; 559-76.

Apart from the case involving Robert Peebles (see note 32, supra), Beardmore had already had an unfortunate tribunal experience with some Canadian workmen when, in December 1915, they were compelled to withdraw objections to the desire of Canadian caulkers to leave the firm, a matter to which brief reference was made in chapter five.

The episode in February 1916, however, concerned seven more Canadians who had completed their six-month stints and who were now seeking certificates from the tribunal<sup>37</sup>. Though Gibson felt that they were entitled to leave the firm when their contracts expired, he was sensitive to the employer's likely reaction. But his call to the men to remain with the firm as a patriotic gesture was sharply rebuffed. As to patriotism, said one, "They had had it thrown in their teeth on different occasions during the last six months." Somewhat taken aback, Gibson insisted that though such an appeal to patriotism was evidently unnecessary in the present case, nonetheless, he felt it his duty to make the appeal.

What was the reason for this almost grovelling posture assumed by the chairman? It seems probable that it was a response to background pressure by officials at the Ministry of Munitions, exerted with a view to "beef up" the attitudes of the Glasgow tribunal chairmen towards leaving certificate applications by overseas volunteers. Thus Beardmore had contacted the manager of the Clydebank labour exchange to enquire whether leaving certificates required to be granted to Canadians brought over by the Board of Trade and who had completed their six-month stint<sup>38</sup>. The answer given on February 9 was that if the men proposed to

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<sup>37</sup>Glasgow Herald, February 14, 1916.

<sup>38</sup>LAB2/63/MT167/1, op.cit.



remain in the U.K., then certificates ought to be granted. If, however, Beardmore required their continued services then the firm was entitled to refuse clearance lines. However, we saw above that the practice of the tribunals in previous similar applications did not correspond to the view that employers were acting reasonably in refusing certificates. Thus when Cmdr. Gibson ruled in favour of the Canadians just three days after Beardmore had received contrary advice, Paterson was enraged and Beardmore livid. Paterson wrote to Wolff that day (Saturday, February 12) pointing out that the labour exchange manager's advice to the company originally emanated from the Board of Trade in London<sup>39</sup>. What was worse, Paterson's assistant, Cramond, had seen Gibson prior to the hearings and had told him that the decisions in these seven Canadians' cases would govern hundreds of other cases at Dalmeir and elsewhere. He left the meeting with Gibson, under the impression that "Gibson now understood". But as he ruefully reported back, all seven certificates were granted that day,

"... and Beardmore's know many other Canadians now applying, and A.J. Campbell, General Manager at Beardmore, has announced he is sick of the Government, the Ministry of Munitions, the Munitions Act and the munitions tribunal, and that unless by 4 p.m. on Monday he has got a direction from the Ministry of Munitions to withhold leaving certificates, he will grant these in every case despite the dislocation to be caused to Admiralty and munitions work."<sup>40</sup>

Paterson ended his note with the following plea.

"I know that the Ministry is reluctant at any time to give directions to Chairmen of Munitions Tribunals. If, however, an exception cannot be made in this case, the only alternative, I am afraid, is to terminate Cmdr. Gibson's appointment."<sup>41</sup>

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<sup>39</sup>Ibid., Paterson to Wolff, February 12, 1916.

<sup>40</sup>Ibid.

<sup>41</sup>Ibid.

In the matter of directions, the ministry was in some difficulty. It had been the practice for leading tribunal decisions to be circulated to chairmen with a view to inducing uniformity, a process furthered by the commissioning of Treasury Solicitor opinions<sup>42</sup>. But this was a long way short of the nobbling of a judge, or even of the executive re-writing of a judgment<sup>43</sup>. Wolff recognized the ministry's dilemma when he wrote to Beveridge two days later<sup>44</sup>. It was, he indicated, "impossible" to give directions to tribunal chairmen in terms of Paterson's request. The Canadians' contracts were for six months only; and therefore it seemed reasonable to state that the men were free to leave at the end of the period. Hopefully, thought Wolff, the appeal court, shortly due to be inaugurated, could iron

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<sup>42</sup>MUN5/353/349/1, op.cit.

<sup>43</sup>Cf. the attempt of the Foreign Office in 1932 to doctor a decision of the Judicial Committee of the Privy Council. See A.V. Lowe and J.R. Young, "An Executive Attempt to Rewrite a Judgment", Law Quarterly Review, Vol. 94, 1978, pp 255-75.



out difficulties if a question of law or mixed fact and law were to arise<sup>45</sup>.

<sup>45</sup>J. Turner MacFarlane, the ministry's local reports officer in Glasgow who, as a practising solicitor, attended tribunal hearings to procure summaries of cases and to note important decisions for the benefit of Whitehall Gardens, was confident, after meeting the new Scottish Appeal Court judge, Lord Dewar, that the latter would "exercise very tactful discrimination" in handling cases. This probably meant that unlike Gibson and his colleagues, he would seek to avoid embarrassing both the ministry and the major employers on which it was heavily dependant. For example, in one case (discussion in chapter five) involving the transfer of workers at Beardmore's from night to day shift, Sheriff Fyfe had ruled that this was not a change in the rate of wages which required prior ministry approval. The ministry, wishing this decision to become a binding precedent on all tribunals, suggested that in the absence of either party taking the matter to appeal, the ministry itself ought to do so. Dewar thought this was an undesirable step but agreed that if other similar cases came before him, he would support Fyfe's view. Thus were bureaucratic-centralist preferences given effect by pliant judicial officers. See LAB2/63/MT167/6, MacFarlane to Payne, April 19, 1916. Arthur Dewar (1860-1917): born Perth; son of John Dewar of the whisky distillery company: Advocate 1885; K.C. 1901; extra-Advocate-Depute on Glasgow circuit 1892-5; Solicitor-General for Scotland, 1909-10; Liberal MP, South Edinburgh, 1899-1900 and 1906-10; appointed Court of Session judge, 1910. See Dod's Peerage, Baronetage and Knightage ... 1914, p 367; Scottish Law Review, Vol. 33, July 1917, pp 190-2. Shortly before his death, he received what must surely have been the supreme accolade, a ringing paean from the parliamentary scourge of the Ministry of Munitions, the Radical MP, William Pringle. Thus during a debate, Pringle agreed that the Munitions Appeal Tribunal had "worked very well, because it has not confined itself strictly to legal considerations". He was here referring to Dewar; for he added that the English Appeal Tribunal was "not so satisfactory, as the Chairman [Atkin] always took the view that he is restricted to an appeal at law". See H.C. Deb., 5th Series, Vol. 92, cols. 2763-4, April 27, 1917. Atkin of course, is considered by the legal establishment to have been one of the "greatest" judges of the past 200 years. He chaired the Committee on the Relations between Men's and Women's Wages (1918); prompting Beatrice Webb, a fellow-committee member, to observe in her usual charming style that he "heartily disliked me: I rather liked him. He was a precise and courteous little person". See (unpublished) diary entry, insert in September 1919, undated. For more official versions of Atkin see, for example, DNB, 1941-50; Who Was Who, 1940; Law Quarterly Review, Vol. 60, 1944, at p 355. It may be of interest to note a comparable instance to the removal of the tribunal chairmen, involving Judge Edward Parry, the well-known County Court judge at Manchester and one of the Industrial Unres Commissioners in 1917. As judge of the Pensions Appeal Tribunal during the war, he awarded a pension to a conscientious objector injured while forcibly being put into uniform. Deciding that the injury arose "out of and in consequence of war service", he incurred the wrath of the Pensions Minister, John Hodge, who "found it was dangerous to have a man with freakish opinions such as he had, occupying any longer such an important position ...". He was sent packing back to the County Court. See John Hodge, Workman's Cottage to Windsor Castle (London: Sampson Low, Marston & Co., Ltd., c. 1931) pp 208-9.



This answer was hardly likely to satisfy either Paterson or Beardmore. Indeed, whether any "question of law or mixed fact and law" was involved in Gibson's decision is extremely doubtful. If, therefore, not all ministry officials were prepared to condemn Gibson in this instance<sup>46</sup> (he did, after all, seek to issue decisions consistent with those given earlier by Andrew in similar cases) his - and Andrew's - utterances in another clutch of cases heard during the same month of February 1916 sealed his, and his colleagues', fate.

#### Gibson and the Coatbridge Labourers

That which finally consigned Gibson and Andrew to the tribunal scrap-heap was their misplaced humanitarianism and solicitude for groups of workers at the very bottom of the munitions pile. These were the labourers mostly employed in the Lanarkshire steel and iron works, whose pitifully low wages, calculated on time and not on piece rates, shocked and outraged the tribunal chairmen. That such wage rates, which averaged around 25/- for a 57 hour week, were determined almost certainly on a customary basis<sup>47</sup> with the approval of the Board of Trade, only served to enhance the disgust which the chairmen felt for a public policy which both tolerated such pathetic wage levels and placed obstacles, such as the leaving certificate scheme, in the path of those labourers determined to extract themselves from their exploitation. Thus, as in the case of the Canadian workmen at Beardmore's, the actions of the chairmen seemed tinged with the features of a moral crusade, whereas the Barclay Curle caulkers' episode (supra) can perhaps be explained as a response by

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<sup>46</sup>In his note to Beveridge on the Canadians' case, Wolff did concede that Gibson was "not really a satisfactory Chairman", but this view reflected Gibson's performances in the labourers' cases. See LAB2/63/MT167/1, Wolff to Beveridge, February 14, 1916.

<sup>47</sup>Cf. S.J. Hurwitz, State Intervention in Britain (New York: Columbia U.P., 1949) p 121.



Andrew to the perceived danger of industrial unrest if an unfavourable decision were recorded. In all three cases, however, the "national interest", as defined by the Ministry of Munitions, was ill-served. In the case of the labourers, the specific criticisms levelled by the ministry officials will clearly demonstrate this aspect.

Before examining the tribunal cases which angered the ministry to such an extent that the decision to remove the chairmen was finally taken, some general observations on the wages position in the iron and steel works in the West of Scotland during the war might be helpful in clarifying the labourers' situation<sup>48</sup>.

The fundamental difficulty, it must be stated at the outset, is that statistics of labourers' earnings are elusive. Most of the coverage in the published sources refers to those covered by sliding scale agreements which affected 80% of all steel and iron workers<sup>49</sup>. From this category, the labourers were excluded, and information relating to the latter's earnings is patchy. Despite this caveat, it is possible to obtain an indication of the relative deprivation suffered by the labourers, which could only be partially ameliorated by sympathetic tribunal rulings until such initiatives were firmly quashed by an insensitive, centralizing ministry officialdom.

<sup>48</sup> For brief descriptions of working conditions in Lanarkshire during the war, see George A.B. Dewar, The Great Munition Feat, 1914-1918, (London: Constable, 1921) pp 150-9; also the extensive coverage of the King's visit to the district in 1917 in the Glasgow Herald, September 20, 1917. For the pre-war period, John Hodge's autobiography contains some information. See Hodge, op.cit. A business history which covers part of the period is Peter L. Payne, "Rationality and Personality: A Study of Mergers in the Scottish Iron and Steel Industry, 1916-1936", Business History, Vol. XIX, 1977, at pp 162-6.

<sup>49</sup> A.L. Bowley, Prices and Wages in the United Kingdom, 1914-1920 (Oxford: Clarendon Press, 1921) p 137.

Certainly, it was in the government's interest to keep wage rates as low as possible in the trade, especially in the case of straight tonnage men who constituted about 30% of the total<sup>50</sup>. With increased output of war materials, a man could earn in three days more than he had previously earned in six, and might question the necessity to earn more than a specific amount<sup>51</sup>. The lower the rate, the greater the incentive to produce more. In such cases, therefore, the government had a vested interest in maintaining lower tonnage rates.

Additionally, the cost of raw materials was continually rising. The chief source of supply of iron ore was Spain, but the cost of importing was constantly rising until 1918. Tonnage rates also increased substantially. Rates from Bilbao to Glasgow rose from 4/3d in August 1914 to 21/- in 1915 and to 26/6d in 1916<sup>52</sup>. As most of those employed in iron and steel were paid on a sliding scale, whether on time or piece rates, this meant that, for example, for every 10/- on the price of ship plates, steel workers received a 5% wage advance. In the first two years of war, prices rose so much that wages were raised by 60%<sup>53</sup>. The following table, taken from Bowley's figures, shows the rate of increase of those on sliding scales in the district.

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<sup>50</sup>Ibid., p.136. There were four main groups: (1) straight time-workers, (2) time and bonus men, (3) time and tonnage men, (4) straight tonnage men. Groups (1) to (3) were regarded as time workers and received the 12½% award in 1917. In group (3) the tonnage bonus was only a small proportion of total earnings. Of course sliding scales could apply both to time and tonnage men, but as already indicated, labourers were not covered by such arrangements. See *ibid.*, pp 136-7.

<sup>51</sup>S.W. Rawson, "War and Wages in the Iron, Coal and Steel Industries", *Economic Journal*, Vol. 26, June 1916, p.175.

<sup>52</sup>Scott and Cunnison, *Industries of the Clyde Valley etc.*, *op.cit.*, p 53

<sup>53</sup>*Forward*, June 24, 1916. This was an article by Owen Coyle of the British Iron and Steel Workers' Society. He added that the government then placed a price limit of £11:10/- on domestic iron, as a result of which the wage rises stopped. This however did not harm the employers' profits as the price of regular exports soared to £14:15/- a ton. The position with coal was worse after the Limitation of Prices Act. At the end of 1915, munitions workers were idle for want of coal to power the munitions works, while hundreds of tons of coal were waiting at the quays for export at £3:4/- a ton instead of at 17/9d for domestic coal.



TABLE 6.1

Iron and Steel Manufacture: West Scotland.Sliding Scale Rates as Percentage of July 1914 Levels

	<u>Iron Millmen</u>	<u>Steel Workers</u>
July 1914	100	100
" 1915	107½	139
" 1916	162½	156
" 1917	180	161
" 1918	192½	166
" 1919	247½	215
" 1920	295	288

Source: A.L. Bowley, Prices and Wages in the United Kingdom, 1914-1920 (Oxford: Clarendon Press, 1921). Table XLVII.

In July 1916, the increase in retail food prices above the July 1914 level was 61%<sup>54</sup>, so that the wages of the sliding scale iron and steel workers were just keeping pace with inflation. However, while such workers - 80% of all iron and steel workers, as we have already observed - comprised groups such as puddlers, millmen, gas-producer men, charge wheelers, enginemen, cranemen and firemen<sup>55</sup>, the labourers were straight time workers. Increased effort and output could not, therefore, be reflected in increased wages. The only avenue to enhanced earnings was via collective (not individual) bargaining or arbitration, or by transferring to different occupations. To an extent, some movement did occur

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<sup>54</sup> Labour Gazette, January 1917, p 5.

<sup>55</sup> Bowley, op.cit., pp 137, 144.

during the war as labour in higher paid steel and iron occupations became scarcer. Thus men might be transferred from ordinary labouring at from 4/- to 5/6d. a shift to a new job, possibly involving the use of simple pneumatic tools at wages ranging from £2:17/6d. to £5:5/-<sup>56</sup>. But these would be the lucky ones whose employers instigated the transfers. The unlucky ones were those who could only better themselves by appealing to Gibson's and Andrew's tribunals to overturn their employers' refusal to grant their release. If the applications failed, their desperation would become acute, with little prospect of favourable treatment from the Board of Trade arbiters. For example, on February 15, 1916, that is, a few days after the first applications for leaving certificates were submitted to Gibson's tribunal, a court of arbitration comprising Sheriff A.O.M. Mackenzie, Sheriff-principal of Lanarkshire, George Pate and (even) Robert Smillie, rejected a claim for 2d. an hour made on behalf of bricklayers' labourers and general labourers in West of Scotland steel works<sup>57</sup>. Nine months later, the steel labourers' unions managed to wrest a paltry ½d. an hour out of the Committee on Production<sup>58</sup>. When Herbert Beard, the president of the West of Scotland Iron and Steel Institute, just nine days after this award was announced, declared that high wages in the iron and steel trade had led to limitation of output and to increases in "frivolities and indulgence in amusements", he cannot have been referring to the labouring class<sup>59</sup>. The frustration

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<sup>56</sup> Rawson, op.cit., p 180

<sup>57</sup> Labour Gazette, March 1916, p 111. Perhaps the Iron and Steel Workers' Society launched a campaign to exert pressure on the authorities wherever it could, a campaign which included the lodging of tribunal application. If so, this offered a further illustration of "collective bargaining by litigation".

<sup>58</sup> Ibid., December 1916, p 485. From August 1917 a rise of 3/- a week was granted... See Glasgow Herald, August 4, 1917; Labour Gazette, July 1917, p 265; ibid., August 1917, p 309. For those in the Workers' Union, see ibid., April 1917, p 157; ibid., December 1917, p 470.

<sup>59</sup> Glasgow Herald, December 9, 1916.



of those engineers witnessing their semi-skilled co-workers on piece-rates earning greater sums than they, is well documented. The 12½% award of October 1917, eventually granted also to the iron and steel labourers, was surely as deserved and as predictable, given the history of wartime exploitation to which they were subjected. It was the misfortune of Gibson and Andrew to recognize their plight too early, as the following tribunal cases, and the ministry's ferocious reaction, indicate.

The first of the cases was heard on February 7, 1916 when seven labourers at Stewart & Lloyds steel works applied for leaving certificates<sup>60</sup>. Their representative, Robert Climie of the Workers' Union, told the tribunal that several of the men were paid 4/6d. a day and one had been offered 15/- elsewhere. Gibson, however, declined to grant most of the certificates on the ground that the labourers were in receipt of Board of Trade approved rates. Nonetheless, he continued<sup>61</sup>,

"They had heard a great deal since the Munitions Act had come into force about the huge wages being earned by munitions workers, and he thought it would be well that the public should understand the situation, and see both sides of the picture. Personally, he had been aware all along of the rate of wages being earned by labourers, and while it was unfortunately not a matter which came under the cognizance of that court, and they were unable to deal with cases of that kind, there was nothing to prevent him sympathising with the men in the position in which they found themselves."

The second case heard two days later<sup>62</sup> did not directly involve labourers employed in steel works but is significant for the explicit condemnation by Gibson of the underpayment made to an engineman, William Cough, employed at Barclay Curle shipyard. Working 87½ hours on night shift

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<sup>60</sup> Ibid., February 8, 1916; Coatbridge Leader, February 12, 1916.

<sup>61</sup> Glasgow Herald, February 8, 1916.

<sup>62</sup> Ibid., February 10, 1916.

and 80½ hours a week on days, Gough reckoned that his pay, which the employer stated was 44/- including holidays, was grossly inadequate. In response, Gibson declared that he did not wish to encourage men to leave their employment but in the present case, Gough was clearly "very much underpaid". If he found a job elsewhere, Gibson told him, his leaving certificate application would receive sympathetic consideration. We can see immediately the seeds of the ministry's discontent in its realization that its carefully prepared schemes to prevent the movement of labour was under threat from its own agents of policy enforcement. We shall return to this matter shortly, after considering those other tribunal hearings in similar vein which caused consternation among the ministry officials.

The third of Gibson's "trilogy" of allegedly horrendous decisions was heard the following day and concerned an application by another Stewart & Lloyd's labourer, William Barbour, to leave his employment<sup>63</sup>. His trade union official, Owen Coyle of the Iron and Steel Workers' Society, told the tribunal that Barbour, a family man, was earning 25/- for a 57-hour week, whereas he had been offered a job elsewhere at 30/- for a similar week. He used to rely on overtime to supplement his income but this was no longer available. When Gibson was told by the firm that the rates in the district were less than 25/- (they were 24/-), he commented<sup>64</sup>,

"Then all I can say is that in circumstances such as these, it is a scandal. To my mind, these small wages are due to the fact that the labourers are not sufficiently organized."

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<sup>63</sup>Ibid., February 11, 1916.

<sup>64</sup>Ibid.



"It is certainly no part of the function of the Chairman to let himself loose on questions of wages and so stir up a great deal of discontent in the district."

The fact that Gibson was aware that the men were receiving wage rates approved by the Board of Trade made,

"... his succeeding remarks nothing short of impertinence. He has no right whatever in any way to criticize the scales of wages,"

especially where both sides had been able to make representations to the Board of Trade.

Sir George Askwith was also in an angry mood. Writing from Glasgow to Llewellyn Smith, and enclosing press cuttings of Gibson's statements, Askwith insisted that<sup>68</sup>,

"It is not practicable to sit in this City hearing cases affecting thousands of men and refusing applications when these idiots at the head of Government Tribunals are airing their views on wages."

The die was now cast, and the ministry, finally deciding the following week to dispense with their services, at last wrote to the three chairman on March 1, giving them one month's notice. Paterson, though "delighted to learn" that the letters of dismissal had been sent, remained concerned, nonetheless, lest there still be opportunities for further "irresponsible outbreaks [sic] re what is a living wage for a wartime labourer"<sup>69</sup>. In respect to Gibson, his fears were, it seems, groundless, for in the last such case prior to the termination of his office, no embarrassing criticism of wage levels can be traced in the report of the hearing. The case, heard on March 22, concerned a young married man, also at Stewart & Lloyds, who had been with the firm for

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<sup>68</sup> Ibid., Askwith to Llewellyn Smith, February 11, 1916.

<sup>69</sup> Ibid., Paterson to Wolff, March 3, 1916.

Gibson had now compiled his own judicial obituary with his comments in the labourers' cases and his handling of the Canadians' hearing earlier. Indeed while all the manoeuvring within the ministry over the replacement of the chairmen was obviously a closely guarded secret prior to the actual assumption of office by the new local tribunal chairmen, Fyfe and Craigie, the Forward prophetically hinted at things to come. Commenting on the Barbour case, it wrote<sup>65</sup>,

"If Cmdr. Gibson continues to affront Capitalism like that, he will get his own Clearance Certificate one of these days. In the meantime, however, he is giving the workers more confidence in the munitions tribunals."

James Paterson at the ministry's local office in Glasgow, now set in motion the final act of the drama. Writing to Wolff on February 12, he referred to Gibson's "irresponsible utterances on wage questions", and pointed specifically to his remarks in "the Coatbridge case", that is, in the Stewart & Lloyds labourers' cases<sup>66</sup>. Hitherto, Paterson had "pled" with his superiors to retain Gibson as the best of the trio. Now he would have to alter his opinion unless the ministry could direct Gibson to cease his "outbursts" on matters with which he was not acquainted and in respect to which no evidence had been presented to him.

Paterson went on to explain that R.D.D. Barman, the managing director at Stewart & Lloyds, had spoken to him, "using language which he felt constrained to convey to the ministry". He added that<sup>67</sup>,

<sup>65</sup>Forward, February 19, 1916.

<sup>66</sup>LAB2/63/MT167/1, op.cit. Paterson to Wolff, February 12, 1916.

<sup>67</sup>John King, an employers' assessor, and secretary of the National Light Castings Association had also written to complain of Gibson's comments at the tribunal. They "are always quite gratuitous, but they have a most disturbing effect among the workers." He wanted to know "if this is to be permitted to go on?" See LAB2/47/MT107/1, King to Ministry of Munitions, February 16, 1916.



eight years during which time he had received a rise of just one shilling a week<sup>70</sup>. His present wage was 4/6d. a day, and he had been promised munitions work with another firm which, on piece rate calculation, would earn him about 10/- a shift. Though the certificate was granted - a last defiant gesture by Gibson in the exercise of his judicial discretion? - the "irresponsible outbursts" were noticeably absent. Perhaps the ministry's message was learned - too late.

But Paterson's fears that the period of notice granted to the chairmen might not be trouble-free did come close to realization in the case of Andrew. The latter had already distinguished himself just one week before receiving his dismissal notice, in a case involving John Ralston, a boiler feeder in Coatbridge whose rate of pay was 4½d. an hour. The firm, presumably Stewart & Lloyds again, would pay only Board of Trade rates, prompting Andrew, in granting the certificate, to announce that<sup>71</sup>,

"... they would try and move the Board of Trade. They must endeavour to assist the men with such low wages. The earnings of the applicant did not represent a living wage at the present time."

It seems likely that Paterson failed to notice this case. Certainly, in his letter to Wolff on March 3 (note 69, supra), he did state that Andrew had followed Gibson in making explicit remarks about the inadequacy of 25/- for a labourer at Stewart & Lloyds. But he was undoubtedly referring to a case over which Andrew presided on March 1, ironically the date of his letter of dismissal. The case was virtually identical to those already described, with Andrew declaring that 25/- was<sup>72</sup>,

<sup>70</sup> Glasgow Herald, March 23, 1916.

<sup>71</sup> Ibid., February 24, 1916.

<sup>72</sup> Ibid., March 2, 1916.

"... far too little in these times of high prices for an active labourer working 59 hours a week. We wish the Board of Trade would allow you [the firm] to do something better, and there seems to be an indication in that direction from rules which have been issued today. I think we have no option but to let this man better himself."<sup>73</sup>

The next morning, Paterson explained to Wolff, there was a flood of applications to the management for leaving certificates from men in similar positions; and several of the shops in Coatbridge were "upset"<sup>74</sup>. As he pointed out,

"Interference with Stewart & Lloyds interrupts other important controlled establishments in West Scotland<sup>75</sup>. Therefore we must tell the three not to make comments re wages."

By this time, of course, their time was up and their removal was merely a matter, for Paterson, of counting the days and keeping his fingers crossed.

Thus did Andrew join Gloag and Gibson in falling from grace. While attention focussed on the deportation of the shop stewards, no one noticed the other evictions occurring simultaneously. Thus, if the Ministry of Munitions was embroiled in the difficulties of forcing through dilution; if the obstructiveness of both the leadership and the rank-and-file of the ASE in this regard was problematic; and if the

<sup>73</sup> The rules referred to probably related to the special arbitration panels to be set up to adjudicate on differences involving unskilled labourers under section 8 of the 1916 Amendment Act.

<sup>74</sup> LAB2/47/MT107/1, op.cit., Paterson to Wolff, March 3, 1916.

<sup>75</sup> The firm had three tube works and one foundry in Coatbridge, though other iron and steel companies were also located there, for example, the Carnbroe Ironworks of Merry and Cunningham Ltd. For the Stewart & Lloyds establishments, see Bev. VII, 23, f.287.



deportation of the shop stewards of the CWC was the only drastic measure which could untangle that particular Gordian knot; nonetheless, the ministry's treatment of its own tribunal chairmen clearly indicates that other critical considerations also occupied its thoughts. Thus the maintenance of cooperation with major employers such as Beardmore and Stewart & Lloyds on matters wholly unconnected with the dilution campaign; the necessity to preserve intact both the contours and the principle of the district rate; and, finally, the imperative need to reiterate that there was no free market in labour, were seen as being as crucial to the war effort as any drastic steps taken to advance dilution.

With Gloag, Gibson and Andrew gone, the new local tribunal chairmen were to be Sheriffs Fyfe and Craigie<sup>76</sup>, a clear reflection of the failure of the previous incumbents sufficiently to "create the judicial atmosphere necessary in the Glasgow situation"<sup>77</sup>.

The "judicial atmosphere" did of course relate predominantly to Gloag's handling of controversial strike prosecutions. The factors which also led to the removal of his colleagues were not as visible, but were nonetheless damaging to the credibility of ministry policy in enforcing the Munitions Act.

<sup>76</sup> John Craigie (1857-1919): born Blairgowrie, educated Perth Academy and Edinburgh University. Bar 1884; K.C. 1905. Mainly engaged in consultancy; effective political speaker (Liberal) till appointed additional sheriff at Glasgow, 1910. Sheriff Court work originally largely confined to workmen's compensation and summary civil work. Writer on conveyancing, e.g. Heritable Rights (3 edns.); Moveable Rights (2 edns.); Elements of Conveyancing and Conveyancing Statutes. Became chairman of Clyde District Maritime Board, instituted by the Shipping Controller to secure closer co-operation between employers and workers, and especially to prevent disputes between employers and seamen. Board also determined questions of wages and supply of seamen. See Glasgow Herald, October 20, 1919.

<sup>77</sup> LAB2/47/MT107/1, memorandum by Wolff, January 24, 1916.

The preoccupation by Gibson and Andrew with the issue of a living wage for poorly paid labourers strongly indicates a sensitive and sympathetic attitude, which sometimes did and sometimes did not, lead to the grant of a leaving certificate by the tribunal<sup>78</sup>. Nonetheless, such expressions of sympathy for the plight of the low paid were highly disconcerting to the ministry. What to many observers might be justifiable comments in the wake of rising prices and increasing shortages of commodities was, according to the ministry, dangerous naivety. By raising false expectations of rapid improvement and by indulging in emotional appeals to the authorities, the chairmen were exceeding their remit. The delicate policy undertaken by the Board of Trade conciliators and arbiters, designed to contain wages while simultaneously confining industrial conflict, would be threatened by such ingenuous and injudicious remarks.

The crux of the ministry's complaint was, in fact, not that the tribunal chairmen had invoked the moral doctrine of the living wage in order to publicise the case of the labourers. Such a doctrine is not necessarily antithetical to policies which contain corporatist nuances. Indeed, the aims of unity and order can be met by the application of the just wage. What infuriated the officials was the endorsement of the ideology of the market by the chairmen. For it was precisely market competition for labour, which the Munitions Act was designed to curb. Yet here were ministry appointees sanctioning and encouraging the very antithesis of the policy they were charged with enforcing. So long as the labourers were in receipt of the district rate, there could be no warrant for the grant of leaving certificates which could only lead to bidding-up.

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<sup>78</sup>For another similar instance, see Glasgow Herald, November 12, 1915,



instability and general dissatisfaction - precisely that which was beginning to occur once the initial green light had been given in the shape of a favourable tribunal decision or obiter dictum. The purpose of compulsory wage regulation was to discourage individuals and work groups from believing that their favourable market position was exploitable by demanding improved terms and conditions and by threatening to leave if they were not met. The practice of the tribunal chairmen was, however, tending to make a mockery of government intentions which were based on centralized determination of such matters. For this reason, inter alia, they were removed.

#### The Labourers' Postscript

Incredibly, however, the issue of low wages was also the subject of "careless talk", indulged in shortly thereafter, by Sheriff Fyfe himself, though no disciplinary steps against him appeared to have been taken. Thus in one case heard in mid-April 1916, he criticised the lack of uniformity attaching to labourers' wage rates and suggested that a "fixed standard" would "save a lot of heartburning throughout the country"<sup>79</sup>. If the employers could not increase the wage of an applicant on 29/- a week who had been offered another post at 35/-, he, Sheriff Fyfe, "might consider he was entitled to his certificate if he applied again". At the same sitting was also heard an application by a labourer on 24/-, compelled to work 93 hours a week during the previous three weeks, in order to provide adequately for his family. As his trade union representative told the sheriff, "there would be nothing but unrest" among those labourers receiving less than the standard rate. What this implied was that the standard rate differed from the district

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<sup>79</sup>Ibid., April 17, 1916.

rate in that the latter was the irreducible minimum (probably 24/-) approved by the Board of Trade. Thus Fyfe's observations were clearly directed toward rounding up the going rate.

Whatever his motives, the local engineering employers were wary of this intervention, and resolved to write to both Fyfe and Craigie, with a view to enlighten them as to the existing wage structures affecting the different classes of labourers<sup>80</sup>. Clearly, the engineering employers wished to ensure that Fyfe confined his pronouncements, if he really felt compelled to make such statements, to the steel and building trades. For it would hardly do to stir up false hopes among engineering labourers as to what wages the tribunal chairmen thought they were entitled to receive.

Yet, for the moment, Fyfe was not to be deflected. Thus, when, in another case, a building labourer employed by Messrs. William Arrol & Co. applied for a certificate in July 1916, the employee stated that his wages were 25/-, whereas he could obtain 27-28/- elsewhere<sup>81</sup>. Though the labourer was receiving, according to the employer, the standard rate, Fyfe went so far as to recommend an actual figure, 27/-, which he thought ought to be the minimum, and advised the company to contact the ministry about a proposed increase.

"It was true", he added<sup>82</sup>, that "the tribunal had nothing to do with wages, but they might make a recommendation in cases where there seemed an injustice."

Possibly encouraged by Fyfe's action in the above case, a group of labourers, the following month, sought his opinion during a leaving

<sup>80</sup> NWETEA, Minute Book No.7, April 20, 1916.

<sup>81</sup> Glasgow Herald, July 13, 1916.

<sup>82</sup> Ibid.



certificate hearing, as to what constituted a "fair and living wage"<sup>83</sup>. One labourer explained that he was being paid 5<sup>3</sup>/<sub>4</sub>d. an hour, plus 3/3d. war bonus, whereas the standard rate was 7<sup>1</sup>/<sub>2</sub>d. an hour; that is, his wage was almost 27/-, excluding bonus, for a 56 hour week. Perhaps Fyfe considered he had gone too far in the Arrol case; perhaps the ministry had communicated with him in unambiguous terms (no ministry documents dealing with this episode can be traced). Whatever the explanation, Fyfe was clearly less forthcoming on this occasion. The labourer's request, he declared<sup>84</sup>, "... might be a compliment to the Court, but they were not there to settle everything." He was prepared to concede that the applicants were entitled to a rate which,

"... enables a man to live. But whatever my personal opinion is, the point does not arise in this Court.

Applicant: You would not care to express your personal opinion?

Fyfe: I have done so about fifty times already in the strongest possible terms, but it is not paid any attention to", he concluded.

Fyfe, as we shall see in chapter seven, seriously contemplated his tribunal becoming a wage-fixing body as the logical next step, once it was recognized as a forum wherein to appeal specifically against low pay. But until Parliament had authorized the change, Fyfe considered it his duty to arrest any encouragement of this development. It is surely for this reason that he remained coy in the above case. Thus at the later hearing involving those operative plumbers referred to at the start of chapter five (and in respect to whom the issue of low pay for labourers was irrelevant), he stated that<sup>85</sup>,

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<sup>83</sup>Ibid., August 16, 1916.

<sup>84</sup>Ibid.

<sup>85</sup>Ibid., November 22, 1916.

"One cannot of course but sympathise with workmen, especially the unskilled workmen, and of them more particularly that less intelligent class who belong to no union and have nobody to advise them about the Munitions Act under which they must submit to live and work during the war. But surely it ought to be obvious even to the meanest intelligence that for this tribunal to express in any individual case any opinion upon wages rates would lead to hopeless confusion."

While the ministry's message was unambiguously conveyed in this last case, there is no doubt that some of Fyfe's earlier meanderings through those cases involving labourers were reminiscent of the practices of his former colleagues. Indeed, he perhaps exceeded the achievements of the involuntarily retired chairmen when, as we saw above, he himself proposed an appropriate figure for construction industry labourers. Even the disgraced trio did not venture that far, yet they were removed while he remained. Why this was so can only be inferred, given the absence of relevant ministry documentation.

First, as we have just seen, his earlier solecisms were soon recanted. Second, if it were decided that what is sauce for the goose is also sauce for the gander, and so Fyfe would have to go, how could the ministry publicly justify yet another change of chairmen on the tribunal? Indeed, could they expect to persuade a new incumbent to a position which smacked of the kiss of death? Third, though perhaps unlikely, the ministry may have reasoned that there was indeed a fundamental problem concerning labourers' wage rates which it was difficult to avoid discussing during hearings. Finally, and most crucially, Fyfe was simply too valuable to the ministry to permit his compulsory departure, which equity to Gibson and his colleagues perhaps demanded. For Fyfe's all-round track record as chairman bore favourable comparison with every other chairman on the list, as we saw in the Sam Crush affair, discussed in chapter three.



Indeed, any sentimentality towards the claims of poorly paid labourers was conditional on their constituting the deserving poor. They would forfeit that claim if their actions to advance their cause assumed a more direct and forceful step than merely lodging leaving certificate applications. Thus when ten labourers at a steel works were prosecuted for being absent without leave, the sympathy previously expressed for those earning only 24/- a week, evaporated in a flash<sup>86</sup>. Informed by the employer that the men's action had caused almost 40 other employees to be thrown idle, Sheriff Fyfe did not mince his words.

"You are the kind of fellows that I should have the power to put in the Army ... I am exceedingly sorry I cannot send you straight to the front line of trenches in Flanders. You are traitors to your country. It is quite evident that you don't understand the seriousness of the position you have adopted ..."<sup>87</sup>

This was more like the Sheriff Fyfe of old. For even if the advent of compulsory military service had no doubt provided encouragement to the severity of his condemnation, it was clear that his previous aberrations had now ceased. His continuation in office was vindicated and centralizing tendencies reinforced.

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<sup>86</sup>Ibid., August 3, 1916.

<sup>87</sup>Ibid. Characteristically, he imposed light penalties of 10/- per man. Even Sheriff Fyfe appreciated the dangers of inflaming passions unnecessarily by imposing stiff fines on offenders.

The Enforcement of the Munitions of War Acts, 1915-17,

with particular reference to

Proceedings before the Munitions Tribunal in Glasgow,

1915-1921

by

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Thesis submitted for the Degree of Doctor of Philosophy,

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## CHAPTER SEVEN

### Wage Frustration and Strike Prosecutions 1916-1918

#### Introduction

As we have remarked earlier, the spring of 1916 marked a watershed in industrial relations on the Clyde. The deportation of the shop stewards had a calming influence on the industrial climate.<sup>1</sup> The seething discontent had abated, if only to gain a respite. The munitions tribunal in Glasgow was under new management, though whether anyone outside the Ministry of Munitions noticed, is a different matter.<sup>2</sup> Certainly the atmosphere within the tribunal showed a marked change from that under the old regime whose indulgence had been its own undoing. The dilution programme was, at last, proceeding apace, relatively unhindered,<sup>3</sup> while the most glaring abuses under the Munitions Act had, on paper at least, been rectified in the amendment Act. The wage freeze which had prevented the Committee on Production from issuing general wage awards now began to thaw.<sup>4</sup> Moreover, the experience of almost one year's working of the munitions tribunal suggested the tactical possibilities which it might offer workers as an aid to collective bargaining. Thus despite the restrictions which lay at the core of the Munitions Act - the prohibition of strikes, the restraints on labour mobility, the pursuit of labour discipline, compulsory arbitration and the drive towards centralized wage determination - the lesson seemed to be that,

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<sup>1</sup>Cf., "Open activity in opposition to the Munitions Act ceased from that date in the Clyde district", per Scott and Gunnison, The Industries of the Clyde Valley etc. op.cit., p.151.

<sup>2</sup>The less that the public realised it, the more successful was the government's desire for an unproblematic transfer of office.

<sup>3</sup>Scott and Gunnison, op.cit., p. 153.

<sup>4</sup>Wolfe, Labour Supply and Regulation. op.cit., p. 246.



in favourable circumstances, legal proceedings against an employer, or even direct industrial action, might ultimately bear fruit in the shape of improved terms of employment.

But despite the favourable signs pointing to a new modus vivendi, dark clouds loomed on the horizon. Military conscription began to occupy the centre of the stage of social and political concern; despite modifications, the leaving certificate was still strongly resented as an intolerable shackle; working conditions became more exhausting as the pattern of the war shifted: the Somme 1916, then submarine warfare. During 1916, in particular, there was a rapid rise in the cost of living. It is true that the increase in average weekly wage rates for nearly 6 million workpeople in 1916 was 6/- (and 10/- to 12/- for some of those in munitions work) and that this ignores increased earnings due to more regular employment and overtime. However, retail food prices by January 1, 1917 were 87% above the July 1914 figure, whereas a year earlier, they were 45% above the figure at the outbreak of the war. Food prices thus rose 29% in 1916,<sup>5</sup> and food shortages began to occur thereafter.<sup>6</sup> It was easy to associate such movements with profiteering and with the conspicuous consumption of the rich. In short, the sources of tension, the pressure for increased wage demands, were still present. If socialists were not slow to draw attention to "The Huns at Home"<sup>7</sup> or to the profits of patriotism,<sup>8</sup> then the acknowledgement in 1917 of

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<sup>5</sup>Labour Gazette, January 1917, pp 3-5.

<sup>6</sup>Hinton, The First Shop Stewards' Movement, op.cit. pp 236-7.

<sup>7</sup>Thomas Johnston, The Huns at Home During Three Years of the Great War, (Glasgow: Forward Publishing Co., c. 1917).

<sup>8</sup>See for example the comments of George Dallas in the Trade Union Worker, March 1916, p. 8; ibid., July 1916, p. 8. Cf., Glasgow Trades Council, Annual Report 1917-18 (1918) p. 28.

"Excessive Retail Prices in Glasgow" by the capitalist press,<sup>9</sup> suggested that not many in the second city of the Empire would be impressed by the fact that the rate of increase in food prices had slowed down that year.<sup>10</sup>

Against this background of economic pressure, wage disputes continued to erupt, and, as a consequence, the munitions tribunal in Glasgow, like the munitions factories themselves, was working flat out. Those trade unionists who felt inhibited by the anti-strike clauses and by the 'slavery' provisions of an act which, in Kirkwood's words, "cut clean athwart the political economy of the hour",<sup>11</sup> continued to lodge complaints that employers were altering their wages or were failing to honour arbitration awards. A number of employers, for their part, were not hesitant to lay charges against those of their work-force who were prepared to resort to strike action in support of their wage claims.

The following account, therefore, seeks to explore two features of this campaign. First, there is the straightforward object of casting light on a period in 20th century Clydeside labour history which, by any criterion, was unquestionably a "dark age". Once the shop stewards were deported and Gallacher imprisoned for his role in the affair of the Worker<sup>12</sup> the (industrial) labour movement in Glasgow, if the neglect by its historians is indicative, went to

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<sup>9</sup>Glasgow Herald, October 3, 1917. The Lord Provost of Glasgow, Thomas Dunlop, urged the workers to eat just half a potato with each meal, as he had claimed to be doing. He became known as "Half-a-spud" or "Half-a-Potato" Dunlop. See Gallacher, Revolt on the Clyde, op.cit., p. 188; McShane and Smith, Harry McShane: No Mean Fighter, op.cit., p. 96.

<sup>10</sup>Labour Gazette, January 1918, p. 5. Only in the fourth year of the war did wage rates begin to catch up with the rise in the cost of living. See Bowley, Prices and Wages in the United Kingdom, 1914-1920, op.cit., p. 106.

<sup>11</sup>Kirkwood, My Life of Revolt, op.cit., p. 101.

<sup>12</sup>Gallacher, op.cit., pp 119-26.



sleep from the spring of 1916 till May 1917. And at that point, its slumbers were disturbed just long enough to signal its refusal to participate in the May strikes of that year. In fact, of course, significant industrial unrest continued in spite of the emasculation of the CWC and flared up at regular intervals, culminating during the war, in the movement over the application of the 12½% bonus.

The second feature, which will in fact be considered first, is to examine the munitions tribunal's handling of those cases, prosecutions and other complaints concerning wages, which landed on its doorstep. The earlier experience had, of course, taught trade unionists the utility, albeit born of necessity, of going to law, while many employers still clung to a crude deterrent theory of punishment, trusting that a successful prosecution of strikers, irrespective of the merits of their case, would curb their workers' excesses.

In the case of Sheriff Fyfe, while he was prepared to entertain complaints against employers, he became as we shall see, more circumspect about the objectives of trade union litigants. That brand of "collective bargaining by litigation" which, by subtle pleading, sought to transform the munitions tribunal into an arbitration panel was, in one of the first important cases of its kind, halted in its tracks, if only temporarily. The problem was that in 1916 Fyfe appeared to construe his judicial role more rigidly than those trade unionists, frustrated by the delays attendant upon formal arbitration hearings, desired. In this endeavour, however, Fyfe arguably exercised his discretion unduly cautiously. For, as Roger Davidson, commenting on the wages policy promoted by the general secretary of the Ministry of Munitions, has observed,<sup>13</sup>

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<sup>13</sup>Roger Davidson, "Sir Hubert Llewellyn Smith and Labour Policy, 1886-1916", Cambridge PhD., 1971, p. 363.

"However much Llewellyn Smith subscribed to the maintenance in normal circumstances of a "sound policy", as a 'munitioner' his attitude to wage concessions was necessarily opportunist, depending largely on the supply situation and the attitude of unions to measures in which the question of wages was often incidental to the overriding consideration of production."

This, of course, does not go quite as far as to state that,<sup>14</sup>

"If it was true of the Government's labour policy in general that it had none, the aphorism was particularly true in the case of wages".

Nonetheless, both views bring into question Fyfe's apparently dogmatic insistence that the remedy sought from his tribunal be juridically proper. Perhaps the recent establishment of the Scottish Munitions Appeal Tribunal in Edinburgh prompted this more pronounced lurch into legalism, in the knowledge that any diversion from the path of legal righteousness might rapidly be corrected on appeal. More probably, he was reacting as a lawyer might do to encroachments on his domain. Whatever explanation might be advanced, one further possibility exists. That is, that if the

"... control exercised over wages during the war ... was rather a policy of interpreting than of superseding the play of supply and demand,"<sup>15</sup>

then this might suggest the teasing proposition that in spite of the earlier affair of Gibson and Andrew, the development of collective bargaining by litigation within the munitions tribunal might in fact have met with the approval of the Ministry of Munitions.<sup>16</sup> If so, then Fyfe's rigidity was hardly conducive to the lessening of tensions among Glasgow's munitions workers. Perhaps this realization slowly

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<sup>14</sup>Hurwitz, State Intervention in Great Britain... 1914-1919, op.cit. p.120.

<sup>15</sup>Clay, "Government Control of Wages in War-Time", op.cit., p.72.

<sup>16</sup>Askwith, of course, did not approve. But his was a different case. Davidson quotes Wolfe on Askwith's self-evaluation. The latter was "God's own hero and the Ministry of Munitions Labour Department the devil's own idiot". See Davidson (1971) op.cit., p.363; also Roger Davidson, "Introduction", in Lord Askwith, Industrial Problems and Disputes (reissued; Brighton: Harvester Press, 1974), p. xii.



sank in, especially when evidence to the Commission on Industrial Unrest was absorbed by Fyfe in his capacity as chairman of the Scotland division of the enquiry. The upshot, as we shall see, was that, by later 1917, Fyfe's tribunal once more assumed the role of shock absorber, or of lightning conductor, mediating conflicts over wages in such a fashion that, unless the Appeal Tribunal ruled otherwise, worker dissatisfaction was abated for the moment.

The argument of this chapter, therefore, is that the pattern of decision-making adopted by Sheriff Fyfe's tribunal in deliberating upon questions of wage regulation, whether mediated through workers' complaints of employers' failure to comply with awards or through strike prosecutions, is exceedingly complex and, on occasion, maddeningly contradictory. Nonetheless, certain prevalent features which consistently reinforce corporatist notions of patriotic unity and order can be discerned. First, his decisions on the applicability of awards or on the grant or refusal of leaving certificates tended to favour groups which might be considered to be of strategic importance to the war effort. Second, he would uphold managerial prerogatives if deemed consistent with the national interest. Third, when dealing with strikes, he would condemn both unofficial action and "irresponsible" trade union leadership. But he was sanguine enough to impose hefty fines only where continued recalcitrance was established. For his decisions were strongly influenced by his recognition that industrial unrest was endemic and could only to a limited extent be attributed to malevolent or revolutionary sentiment. He knew that he was condemned to a Canute-like existence, fruitlessly holding back the tide of discontent which the pressures of war were whipping up. Thus his role oscillated from that of stern deliverer of penal thunderbolts to that of self-conscious sympathiser with those strikers fined nominal amounts by the tribunal for striking

out of sheer frustration and exasperation. But it was also as a conduit for the channelling of grievances that his tribunal performed a useful role in advancing the government's interests. He syphoned off some of the complaints that might otherwise have exploded in more direct action. He possibly also relieved some of the burden from the shoulders of the arbitration machinery, though he also redirected issues into Askwith's lap if he thought that no immediate answer was called for. He thus played it by ear, though subject to certain overriding precepts. One might say that in this respect, he matched the state bureaucracy at large, and achieved ultimately the same kind of success as the whole munitions enterprise.

#### Wage Regulation

Many of the cases heard by the Glasgow tribunal during this period dealt with highly specific questions surrounding complaints of failure to implement arbitration awards. Thus definitional questions relating to riggers' helpers in shipyards,<sup>17</sup> to toolsmiths' strikers<sup>18</sup> and to "all round machinists"<sup>19</sup> were raised in connection with awards. Holiday pay,<sup>20</sup> the competence displayed by workmen,<sup>21</sup> and the calculation of overtime rates<sup>22</sup> were other such "bread-and-butter" matters adjudicated upon by the tribunal under this jurisdictional head.

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- <sup>17</sup>Glasgow Herald August 19, 1916. The firm was almost certainly D & W. Henderson, and the union involved, the National Amalgamated Union of Labour. For the arbitration award, see Labour Gazette, July 1916, p.268.
- <sup>18</sup>Ibid., November 1, 1918. The complaint was lodged against Messrs Mechans of Scotstoun by John Storrie, district secretary of the Smiths and Strikers' Society.
- <sup>19</sup>Ibid., December 14, 1918 for the appeal tribunal decision. The case was between Glasgow Corporation and the Amalgamated Society of Woodcutting Machinists, represented by James Mackay, its district secretary.
- <sup>20</sup>Ibid., November 7, 1917. The case was a prelude to the participation of the bricklayers in the 12½% bonus movement on Clydeside. The men were employed by a "large ironworks" in the city, possibly Parkhead Forge itself.
- <sup>21</sup>Ibid., November 10, 1917. The firm was possibly Lang's of Johnstone.
- <sup>22</sup>Ibid., April 30, June 4, July 2, 1917. For the platers' helpers' unsuccessful complaint that the employers had altered wage rates without consent, see ibid., April 19, 1917.



The 12½% bonus of October 1917, payable to time-workers, also brought a rash of legal claims by Glasgow workmen for inclusion within the award. Thus sheet-metal workers employed by William Harvie & Co. Ltd., as well as various groups of skilled workers employed by the Clyde Navigation Trust (which administered the docks) turned to the local tribunal for support. However, having persuaded Sheriff Fyfe as to their entitlement, they unfortunately failed to convince Lord Hunter when the employers lodged appeals.<sup>23</sup>

Occasional complaints alleging that employers had unlawfully altered wage rates without the approval of the Ministry of Munitions were also heard. Thus a complaint was upheld against an employer who, in order to comply with the rules for membership of the local engineering employers' association, terminated an outworking allowance of 1/- a day payable to sheet-iron workers working one mile from the factory.<sup>24</sup> But perhaps the most remarkable case of this genre involved a Wishaw firm, the Rolled Steel Forge Company, whom the Ministry of Munitions accused of unlawfully raising the wage rates of its employees. The case did, however, emerge in the wake of the abolition of the leaving certificate scheme,<sup>25</sup> and it appears that it was in an effort

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<sup>23</sup> Ibid., June 18, 1918; William Harvie & Co. Ltd. v. Sanders, 1918 SMAR 147-8, July 30, 1918 (sheet-metal workers); Glasgow Herald, June 19, 1918; ASE, Monthly Journal and Report, March 1918, p. 20; Clyde Navigation Trustees v Daniel Mackenzie et al., 1918 SMAR 142-6, July 30, 1918; Glasgow Herald, August 3, November 20, 1918 (CNT blacksmiths, fitters and slaters). In another application based on the 12½% award, lodged on October 25, 1917, Sheriff Fyfe told the applicant engineer that he had jumped the gun by lodging a default complaint so early. See ibid., November 9, 1917. William Hunter: born Ayr, October 9, 1865; son of David Hunter, ship-owner. Educated Ayr Academy and Edinburgh University. Advocate 1889; K.C. 1905; Solicitor-General for Scotland, April 1910 to December 1911; Liberal MP for Govan 1910-11; appointed Court of Session judge, 1912; appointed, with Professor W.R. Scott, to enquire into the facts behind the Clyde rent strikes in Autumn 1915, and reported to Secretary for Scotland, upholding tenants' criticisms. See OHMM, Vol. IV, Part II, p. 103; also Dod's Peerage, Baronetage and Knightage..., 1914, p. 605.

<sup>24</sup> Glasgow Herald, September 4, 1917.

<sup>25</sup> Ibid., October 25, 1918. For appeal tribunal ruling, see ibid., December 26, 1918.

to persuade the company's turners to withdraw their notices to leave the firm, that the employer had unsuccessfully petitioned the ministry to approve an increase in the men's wage rates. Despite official refusal, the increases were granted, an act of "defiance" of the ministry, according to Sheriff Fyfe, which merited the imposition of a fine of £25 on the company. Widely advertised by the ministry as a statutory device to dissuade rate-cutting by employers, the relevant provision of the 1915 Act, section 4(2), was here seen to be of value in discouraging rate increases. Of course, the ministry's action in withholding its consent was conduct complementary to the labour embargo imposed on companies in July 1918 in a bid to ration skilled craftsmen among competing firms. The seemingly perverse prosecution is therefore explicable in terms of a still residual corporatist philosophy of order and national unity.

There was, additionally, the usual clutch of leaving certificate applications, which might be construed as methods of pressing employers to adjust wages. The transfer of four Fairfield fitters from turbine blading to the fitting shop, as a result of which they lost a "monotony" and "wear-and-tear" bonus, is probably an example.<sup>26</sup> In another leaving certificate case, where engineers' fitters in blast furnaces insisted on parity with fitters in engineering and shipbuilding, Sheriff Fyfe's frustration at this attempt to foist a wage fixing role upon his tribunal led him to complain that,<sup>27</sup>

"We are surrounded with awards nowadays which say that the plumber employed in an engineering work is not the same as the plumber who would be employed to do work in this building, and that shipyard joiners are not the same as house joiners. He thought this matter would require to be settled by the Government Committee on Production."

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<sup>26</sup>Ibid., July 12, 1916.

<sup>27</sup>Ibid., December 21, 1916.



Consequently, the certificates were refused. The plumbers in question were, of course, those referred to in chapter six (supra) when Sheriff Fyfe robustly refused to entertain applications by locomotive plumbers employed by North British Loco. Company at their Atlas, Hydepark and Queen's Park works. For the substance of their complaint, that they were entitled to rates of pay comparable with those earned by operative plumbers working on house construction, was one with which Sheriff Fyfe was not prepared to involve himself. Thus he asserted that,<sup>29</sup>

"Whether the principle upon which these awards were made is sound or not, which is, of course, not a matter for me to offer any opinion upon, there is no doubt at all that to apply for leaving certificates is not a competent course for these plumbers to take to get their question settled."

Even the Glasgow Herald<sup>30</sup> considered that the ruling was an "unfortunate" decision which "makes for trouble in the industrial world". But it was caused, it insisted, by those Board of Trade arbiters who upheld "such fine drawn distinctions" between different categories of employee. Thus, in the plumbers' case, Sheriff Fyfe was not prepared to "usurp" the functions of the Board of Trade.<sup>31</sup> But what is difficult to explain is his seemingly inconsistent approach to such questions of wages adjudication. For example, it is not apparent

<sup>29</sup>Glasgow Herald, November 22, 1916. For negotiations and arbitration over the plumbers' claim, see Labour Gazette, December 1915, p 466; ibid., March 1917, p 119; ibid., November 1917, p 428.

<sup>30</sup>Glasgow Herald, November 22, 1916.

<sup>31</sup>For other similar cases where Fyfe declined to grant leaving certificates on the ground that what was really at stake was a question of wages, see (1) Glasgow Herald, February 12, 1916; 1917 SMAR, at p. 68 (blacksmith's hammerman employed by Summerlee Iron Company, Coatbridge); and (2) Glasgow Herald, April 18, 1917 (underhand to a forger in a Clyde shipyard). Fyfe did, however, grant certificates to builders' labourers who, he held, had been entitled to an arbitration award granted specifically to masons' or bricklayers' labourers. See ibid., March 14, 1917. The decision was eventually upheld on appeal. See Boyd & Forrest Ltd v Climie 1917 SMAR 75-80, March 13, 1917. The Ministry of Munitions originally did not wish to publish Lord Dewar's judgment, but did so following representations by the Workers' Union. See LAB 2/63/MT167/6, op.cit.

why he was prepared to give a ruling on whether toolsmiths' strikers were identical to Smiths' strikers for the purposes of an award, but refused to determine whether engineers' fitters in blast furnaces fell within the same award as that granted to fitters in engineering and shipbuilding establishments. His own textbook on the Munitions Acts was studiously vague on this point. Thus while observing that the tribunal had jurisdiction to enforce a wages order, he added that, "whether a workman falls within the order is not necessarily a question which must be referred to arbitration", as a "difference" under Part One of the 1915 Act.<sup>32</sup>

Notwithstanding, it is just possible to detect the outlines of three tendencies, consistent with the pursuit of a pragmatic, ends-oriented approach, which informed Fyfe's judgments on such wages questions. First, he was, despite the locomotive plumbers' case, less susceptible to granting leaving certificates to isolated individuals, airing grievances over their rates of pay, than to those submitting applications in a group. Second, he was more likely to deliver a judgment favourable to engineering and shipbuilding workers than to employees in trades less directly connected with the production of munitions of war - again, the NB Loco plumbers might be instanced. It was perhaps that his discretion was, in part, informed by levels of militancy, though this was possibly more true of his former colleagues during the earlier phase. But it might also reflect a comparative estimation of the relative importance of different industries to the war effort. A controversial judgment affecting one particular trade might have more serious repercussions in terms of subsequent industrial unrest than in a different trade.

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<sup>32</sup>Fyfe, Employers and Workmen under the Munitions Acts, op.cit., p. 51. *Italics added.* His remarks were made in respect to the 12½% award but are, of course, applicable to all statutory wages orders.



Finally, a third tendency, already familiar, was his endeavour to reinforce managerial prerogative, but only inasmuch as it corresponded with his conception of what the national interest required.

Fyfe's attitude on this point was most forcefully expressed in the case of a leaving certificate application by an engine-fitter transferred to less lucrative work, though still paid the standard rate for the new job.<sup>33</sup> The ASE's proposition was that an employer was not permitted to transfer an employee if a reduction in total wages ensued. However, Sheriff Fyfe's response was to dub this assertion a "most dangerous principle"; for the allocation of men within an establishment had to remain a purely "domestic" matter with which the tribunal could scarcely interfere. Thus he affirmed that,<sup>34</sup>

"It was a very common delusion that the Munitions Acts took the management of the working of an establishment out of the hands of its owners. But that was not so in regard to matters which had not been made the subject of an Order by the Minister of Munitions. Allocation of any class of workmen to the work of an establishment had not been interfered with by any Order. The main purpose of the Munitions Acts was protective, not directory. The allocation of work to effect the best results in production, remained where it always was, and must always necessarily be - with the employers."

Of course, it was true that factory management and discipline remained in the hands of employers (though the state could also institute Ordering of Work prosecutions). But it was misleading for Fyfe to imply that the Munitions Act had left managerial prerogative undisturbed. It is more accurate to suggest that under the Munitions Act, the state delegated such powers to the factory

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<sup>33</sup>Glasgow Herald, September 12, 1917.

<sup>34</sup>Ibid., See also the laudatory, if predictable, editorial on Fyfe's judgment in the same issue. For a similar case, see ibid, August 30, 1917. For the appeal decision, see ibid., October 19, 1917.

owners which they held in trust, and which they were entitled to enforce, so long as they complied with the state's ground rules. And under the Munitions Act, as is clear from the examples in chapter one (and indeed from elsewhere throughout this work), managerial prerogative would be upheld by the tribunal only if it were deemed in the national interest to do so; and not merely out of respect to the property rights of capital.

We may conclude, therefore, that the outcome of wage adjudications conducted before Sheriff Fyfe was likely to turn on the presence or absence, in his evaluation, of such factors as the relative importance of different groups of employees to munitions production; the potential or otherwise for resultant industrial unrest in the event that munitions workers' claims were rebuffed; and the assertion of, or possible threat to, a managerial prerogative subject to the national interest. It is only in the light of these considerations that one can hope to comprehend the logic of Sheriff Fyfe's apparently capricious wage strategy.

#### Dilution and Wage Claims

But we have not, as yet (except in passing), made reference in the present chapter to the relation between Glasgow tribunal wage adjudications and the dilution scheme. Such omission, however, is scarcely fortuitous. Indeed, it may perhaps be taken as further proof, albeit indirect, that the determined campaign by the craft unions for wage guarantees for skilled workers, culminating in the issuance of L2 and L3 (and their statutory successors); only served to distort the scale of the threat facing such workers in the Clyde district. Indeed the magnitude of their "problem" is underlined by the ironic discovery that the two wage regulation hearings before the Glasgow tribunal relevant to the dilution question,



exposed the difficulties which confronted the unskilled and the semi-skilled, rather than those facing the skilled workers themselves.

The first case illustrating the grievances of the lesser skilled involved a labourer assisting a skilled worker in a Clyde engine shop.<sup>35</sup> While the method of payment of the latter had changed from skilled time rates to the premium bonus system, the labourer could not be accommodated within the new payments scheme for craftsmen. Indeed, since he found that he was now working much harder to keep pace with the speeding-up on the part of the skilled tradesman, the unskilled complainant to the tribunal refused to sign a card which committed him to accept a time rate. As a result, he was dismissed without notice, an action which Sheriff Fyfe, who considered that arbitration was more appropriate, adjudged to be unlawful in the circumstances.

The second example in fact touches the very core of dilution in that the complainant was a semi-skilled workman transferred to skilled work, but denied the craftsman's wage.<sup>36</sup> The worker in question, John Cairney, had joined Beardmore's at Dalmuir as a labourer in February 1916, and after about five months was put on to a lathe, turning base plugs for shells. Ultimately, he was transferred to the gun mounting shop where he was undertaking a class of work which prior to the war would have been performed by a time-served turner. As a dilutant, Cairney would therefore have been entitled to rely upon Article 2 of Circular L3, which, as embodied in subsequent statutory orders, declared that,

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<sup>35</sup>Ibid., August 16, 1917.

<sup>36</sup>Ibid., May 14, 25, 1917; Cairney v William Beardmore & Co. Ltd., 1917 SMAR 102-8, June 30, 1917.

"2. Where semi-skilled or unskilled male labour is employed on work identical with that customarily undertaken by skilled labour, the time-rates and piece-rates and premium bonus times shall be the same as customarily obtain for the operations when performed by skilled labour."

Now, as Sheriff Fyfe pointed out (and as is apparent from Charles More's recent analysis),<sup>37</sup> Cairney's claim to equal pay, if,

"... carried to its logical results, ... would mean that every dilutant who is taken in to do work hitherto done by a skilled tradesman, immediately upon being put on to such work, automatically becomes entitled to the skilled tradesman's time rate of pay, whatever may be the dilutant's own skill, or want of skill, in doing the work."<sup>38</sup>

Thus, the link between remuneration and skill would be broken, with the result that the,

"... introduction of dilution of labour has opened a short cut for every dilutant to the cash position, although not to the trade status of a skilled workman."<sup>39</sup>

It may indeed have been, for Sheriff Fyfe, "a result too absurd to be entertained for a moment",<sup>40</sup> but it did reflect the fact that most, though not all, of a skilled craftsman's work was, as More clearly indicates, essentially less skilled, with craft rates being paid because the residual skilled tasks could only be performed by time-served workmen. This lack of all-round competence on the part of dilutants was in fact present in the instant case. For Cairney was undertaking only roughing work which, prior to the war, either second or third year apprentices could perform, rather than the finishing work which only the skilled turner was able to

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<sup>37</sup> Charles More, Skill and the English Working Class 1870-1914 (London: Croom Helm, 1980) Ch. 2.

<sup>38</sup> 1917 SMAR, at p. 103.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.



undertake in the gun mounting shop at Dalmuir. Moreover, as under the Dalmuir dilution agreement, he was still being supervised by a skilled overseer, who had not yet been persuaded that Cairney could work without supervision, Sheriff Fyfe had no difficulty in holding that he was not employed on work "identical to that customarily undertaken by skilled labour..."

One might guess that the result was as pleasing to Beardmore's and to the ASE as it must have been disappointing to the complainant. For many employers, like the union itself, were conscious of the indispensable qualities displayed by craftsmen which the wilder, and more speculative, journalistic exposés, foretelling the demise of the skilled all-rounder, chose to ignore.

Thus one might say that the significance of the judgment in Cairney's case lies in its success in avoiding giving offence to the status consciousness of time-served engineers. It also, of course, was to the economic benefit of the employer in that a class of dilutants was denied access to the skilled rate so long as the employer (and this point was emphasised in the judgment) was of the opinion that the work of the dilutant was not "identical" to that performed by the craftsman.

Thus, whereas most decisions by the Glasgow tribunal in respect to wartime wage regulation might be said to be tactical, the Cairney decision was surely more profound. It was, indeed, strategic.<sup>41</sup>

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<sup>41</sup> But cf., ASE, Monthly Journal and Report, June 1918, pp 31-2 where, to the Middlesex district delegate's "unbounded disgust", Cairney was successfully cited against the union's claim.

Strike Prosecutions 1916-1918

Isolated strike action over wages also came to the attention to the munitions tribunal during this period. For example, two mill workers struck against a reduction in their work load, and consequently in their wage packets, brought about by the company's decision to allocate an extra man to the work.<sup>42</sup> Since the court declared that those advised by Owen Coyle, district secretary of the Amalgamated Society of Steel and Iron Workers, would be "well advised", and that the employer brought the case "as a matter of discipline ... with no desire to punish these particular men", the strikers were admonished. Similarly, an employer's conciliatory remarks led to a lenient fine of 10/- imposed on 14 brass foundry labourers who had struck in pursuit of a comparability claim in June 1917.<sup>43</sup>

However, in a period which witnessed the "May Strikes" throughout much of the country with the notable exception of Clydeside, the Glasgow area's remarkable record for industrial militancy on a grand scale had not fallen completely into abeyance after the shop steward deportations. For a number of major stoppages occurred during this period, not all of which, for instance the iron moulders' strike of September 1917, resulted in prosecutions. The following, however, are the more significant strikes which eventually landed on Sheriff Fyfe's lap.

In one case heard in July 1916, six riveters and three holders-on had gone on strike at a Paisley shipyard (possibly Bow, MacLachlan and Co. Ltd.) in protest at their transfer from work on single-screw to twin-screw mine-sweepers.<sup>44</sup> The transfer represented a reduction

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<sup>42</sup>Ibid., September 14, 1916.

<sup>43</sup>Ibid., June 9, 1917.

<sup>44</sup>Ibid., July 22, 1916.



in rates of between 20 and 25% in view of the larger and heavier dimensions of single-screws. But despite their grievance, the men eschewed Board of Trade intervention and struck work. The result was a severe lecture delivered by the sheriff and hefty fines (which he nonetheless described as lenient) of £10 and £5 in the case of the six found guilty. He also, however, issued a stern rebuke to their trade union official (perhaps William Mackie of the Boilermakers' Society) for not discouraging them from their illegal conduct, despite the latter's protestation that it would be "ill advice to try to compel these men to go in". It seems plausible that Sheriff Fyfe's animated stance in this case - he also condemned the employers who had "stood rather on their own dignity" - was due to the capacity of the non-technical layman to relate directly and intimately to the particular munitions work in question, the construction of a mine sweeper. Perhaps unspecified caulking or the manufacture of optical instruments would not have the same vivid impact on the imagination.

This point becomes clearer in a strike prosecution case heard shortly thereafter. This involved 15 caulkers employed by D. & W. Henderson Ltd. who had been asked to move on to a meat-carrying vessel, certified as war work by the Board of Trade, once they had completed a job on a government transport ship.<sup>45</sup> A dispute broke out over the method of payment, the men preferring a time rate with a percentage, to the employer's offer of piece rates. Apparently the matter was a long-standing grievance which had not proved amenable in the past to a temporary agreement proposed by the management. The strike, however, broke the deadlock; Sheriff Fyfe succeeded in persuading the men to return to work; a nominal fine of £1 was imposed; and arbitration finally arranged which very rapidly conceded most of the men's claims.<sup>46</sup>

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<sup>45</sup>Ibid., September 2, 1916.

<sup>46</sup>Labour Gazette, October 1916, p. 393.

The men had also taken the "precaution" of lodging leaving certificate applications whose hearing was arranged for the afternoon of the strike prosecution. They pointed out that they had specifically been hired on repair work, but were now being allocated to merchant work, which they deemed a breach of contract. Sheriff Fyfe realised the difficulty. For,

"To grant a clearance certificate on the application before him would be to make a laughing-stock of the previous Court, which had fined the men for going on strike rather than do the work assigned to them."<sup>47</sup>

He therefore sought refuge in the artificial reasoning that the leaving certificate applications made no mention of breach of contract, but only of a disputed transfer, an argument which clearly angered the men's representative, William Mackie of the Boilermakers. "And all the time the employers will be laughing up their sleeves," he protested. But the deed was done. The men had already been fined for striking. The tribunal could hardly be expected to grant certificates in those circumstances though the venom of Sheriff Fyfe's condemnation of the Paisley shipyard workers in the previous case was noticeably absent here. A delay to a meat-carrying vessel at that time scarcely conjured up the same image of provocative behaviour as a refusal to work on a particular type of mine-sweeper. A year hence and attitudes might have been different as the food question assumed paramount importance.<sup>48</sup>

But it was in the previous month, August 1916, when three major strike prosecutions followed rapidly one after another, that a reminder of the pent-up frustrations of munitions workers at the

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<sup>47</sup>Glasgow Herald, September 2, 1916.

<sup>48</sup>Cf., Lloyd George in January 1918, in Wrigley, David Lloyd George and the British Labour Movement, op.cit., p. 218.



ineptitude of Board of Trade arbitration was forcefully underlined. The first case involved a two-day stoppage by 72 foundry and dressing shop labourers employed at the Steel Company of Scotland's Parkhead Works.<sup>49</sup> Alex Haddow, secretary of the Parkhead branch of the Steel and Iron Workers' Society, told the tribunal that since April 14, an application for an increase of 2d an hour had been on the table. A conference had been arranged in May, but no settlement achieved. Finally the men gave 14 days' notice and struck on August 7 and 8.

The tactic which Sheriff Fyfe seemed now to be emphasising was not to lambast the strikers for their traitorous behaviour, a prominent feature of the earlier months of the legislation. Instead, his anger was directed to the failure of "responsible" trade union "leadership" to deflect the rank-and-file from their illegal path. Thus Haddow was singled out for having, like the official in the Paisley shipyard case, fomented the strike. This attempt at a public humiliation was also extended to an individual employee, George McDade, who had initially written to the management, "upon private paper", informing them of the 14-day strike ultimatum.<sup>50</sup>

Thus a policy of blaming the militant leaders for having led otherwise docile and law-abiding employees to take industrial action was now evolved, so that, "He was not blaming the men so much as the leaders in this case".<sup>51</sup> Indeed, this policy was a variant

<sup>49</sup>Glasgow Herald, August 14, 1916.

<sup>50</sup>McDade replied by writing to the newspapers, pointing out that he had merely acted as minutes secretary at the branch meeting which voted on the ultimatum. See *ibid*, August 16, 1916.

<sup>51</sup>They were thus fined only £1 each.

on Christopher Addison's simultaneous statement to the Commons that the troubles on Clydeside, which had now passed, he claimed, had been fomented by a small number of individuals who were conducting a campaign also directed against the trade unions.<sup>52</sup>

Thus, officially, there was a conspiracy to cause industrial unrest. It mattered not that the Parkhead labourers were low paid, earning 28/4d, as Owen Coyle, Haddow's full-time officer, pointed out to the tribunal.<sup>53</sup> It mattered not that, as Haddow replied to Fyfe's reminder that the union was "under discipline", that, "Discipline is a very fine phrase, but when it is all on one side I don't like it."<sup>54</sup> Moreover, it mattered not that, as even Sheriff Fyfe admitted,

"One could not sit there without being impressed with the fact that the machinery of arbitration was cumbrous and dilatory; ... undoubtedly it was a misfortune that the pressure in that department made it inevitable that a great deal of time must elapse before a dispute of the kind must be settled."

Within the sphere of Sheriff Fyfe's legal reality, however, such considerations were irrelevant. Thus,

"He was not concerned as to whether the machinery could be improved or not... it was there and it could be adopted and it was the quid pro quo which was put in expressly as the other side of the stipulation that a strike was illegal."

Clearly the insensitivity of such remarks might otherwise have been breathtaking in their effort to devalue the material conditions under which the men were working. Yet the very fact that a policy was adopted of laying blame on individual trade union officers surely suggests that even the sheriff acknowledged the justice of the men's case, even if he disapproved of their methods. This was a dilemma

<sup>52</sup>H.C. Deb, 5th Series, Vol. 85, August 15, 1916, col. 1728.

<sup>53</sup>Coyle was apparently absolved of any blame in the matter by Sheriff

<sup>54</sup>Fyfe who, as we have seen, admired his qualities as a union official. Glasgow Herald, August 14, 1916 for this and subsequent quotations.



which rarely surfaced in 1915 and early 1916 when strikes had occurred. Then, both means and end were equally condemned. Now, however, the early signs of war-weariness, plus the added privations brought about by the rising cost of living, perhaps impressed themselves, if barely imperceptibly, even on Sheriff Fyfe's hardened brow.

Indeed two days later, another batch of 55 strikers from the firm's Hallside works were brought before the tribunal under similar circumstances, and again were represented by Owen Coyle.<sup>55</sup> The message expressed the previous Saturday was reiterated at this Monday sitting, at which the sheriff both bemoaned the delays accompanying the attempt to solve local disputes but also could not close his eyes to the fact that,

"Whether the delay was long or short, the strike was not to be used as a weapon to enforce labour conditions."

The imposition of a modified penalty of £1 was possibly the least he could do to indicate his sympathy for the men's dilemma (as well as to treat them equitably with the Parkhead labourers fined the same amount two days earlier). Otherwise he himself might have been accused of failing to discourage recurrences elsewhere.

But in fact he was on the bench again two days later in Grangemouth to try a further group of munitions workers accused of striking unlawfully. On this occasion, the case involved a number of riveters in dispute with their employer, the Greenock & Grangemouth Dockyard Company over the proper wage rate for shell-plating a merchantman ordered by the Admiralty. However, instead of modified fines, punitive sentences of £20 were imposed on each of the strikers found guilty.<sup>56</sup>

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<sup>55</sup>Ibid., August 15, 1916.

<sup>56</sup>Ibid., August 17, 1916. The hearing took place in Grangemouth Burgh Court.

Principally this was Fyfe's revenge against those accused who had engaged in a "disgraceful exhibition of perversity" by refusing to give an undertaking to the tribunal that they would return to work pending a Board of Trade settlement. But it also probably reflected the fact that only a fortnight earlier, another munitions tribunal in Edinburgh, chaired by Sheriff Fleming, had imposed fines of £10 and £15 on ten other riveters in the same firm, who had also struck over a wage dispute.<sup>57</sup>

Three strike prosecutions in one week certainly hinted, to paraphrase Lady Bracknell, at something more than an accident; indeed, rather more than carelessness. If "epidemic" was too strong a word, then clearly diagnosis and treatment were still urgent. Thus if it was too much to expect establishment views to acknowledge the one-sided nature of a law against strikes which failed to punish employers for intransigence over local disputes or for contriving a deadlock by adopting an attitude of complacency towards the wage grievances of their employees,<sup>58</sup> then at least it was recognised that the existing system was flawed. Thus at the Hallside hearing (supra) Coyle had taken up Fyfe's remarks on the cumbersome procedures hitherto required in order to mobilise the Board of Trade and the Committee on Production. He therefore suggested that a "wages court", modelled on the local munitions tribunals, be established, which could expedite the examination of grievances and reach decisions within a week or a fortnight. Such an innovation, he believed, would reduce the amount of irritation, often resulting in strikes, which accompanied the exasperating delays in reaching settlements.

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<sup>57</sup>Ibid., July 31, 1916. The hearing took place in Edinburgh J.P. Court.

<sup>58</sup>Cf. "In one case, in a great industrial area, when the men applied for an advance in wages, the Employers' Association, by skilful dilatoriness, managed to put off the decision for three months, and then entirely refused to let the award be made retrospective, the result being a saving to the employers of many thousands of pounds for each week of delay". See New Statesman, April 7, 1917, pp 7-8.



Though the idea was not immediately taken up, it eventually re-surfaced in mid-1917 when Sheriff Fyfe drew it to the attention of Sir George Askwith. Thus he envisaged a modified version of the munitions tribunal as a local board of arbitration, whose awards would have legal effect, and which would be specifically designed to by-pass the Board of Trade in London, with its centralizing and delaying tendencies.<sup>59</sup> It was, in effect, a plea for local autonomy, or even for the resurrection of an equivalent to the defunct local armament output committees swept aside by Lloyd George in August 1915. Since small disputes, if not promptly remedied, could develop into larger questions accompanied by bitterness and unrest, the national interest might well be better served, it was felt, by acknowledging the value of<sup>a</sup> local brand of limited corporatism, capable, thought Sheriff Fyfe, of handling such matters.

Predictably, however, not even the charm of Sheriff Fyfe could persuade Sir George Askwith to relinquish central control over state arbitration, no matter how trivial the issues. Askwith's reply, nonetheless, carefully fielded the threat to his own empire-building by focusing on objections just as weighty. Thus, while pointing out that "... long since, there was a considerable objection in the Board of Trade and the Ministry of Munitions to their Munitions Tribunals being mixed up in wages questions" (as Gibson and his colleagues had found out to their cost), he made the comment, which might indeed have served as an indictment of the whole munitions code, that,

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<sup>59</sup>LAB 2/805/IC5379, "Memorandum putting forward Suggestion in favour of the Setting-up of Local Tribunals to deal with Industrial Unrest and to assist... Arbitration... , by T.A. Fyfe, August 1, 1917". The idea was floated in the report of the Scottish Commissioners on Industrial Unrest issued the previous week, and whose chairman was, of course, Sheriff Fyfe. See P.P. 1917-18 XV, 133, para. 13. The Glasgow Herald, August 17, 1917, enthusiastically endorsed the suggestion, arguing, in addition, that an appeal to London from the local arbitration tribunal might be permitted in disputes affecting large numbers. For other sympathetic comments, see ibid., July 23, 1917; also Robert Young, general-secretary of the ASE, in ibid., September 24, 1917.

"One difficulty is to reconcile the proper responsibility and relation of employers and employed with continual interference by Government Authorities or Tribunals. The law itself has long divorced itself from the confidence of Labour or an interest in labour problems. Whether new tribunals without the restrictions of cost which the Law imposes on ordinary plaintiffs would do better, with the addition of permanent judges either becoming unpopular by bias or sympathy one way or the other, I do not at present exercise any prophecy."<sup>60</sup>

Askwith's intention was, of course, to raise the menacing spectre of a local arbitration tribunal tainted at birth by its filial association with legally constituted munitions tribunals. Therefore by insinuating that Fyfe was creating an instrument liable to compromise the crucial pluralist safety valve of voluntary arbitration, he was able to pour cold water on the idea, leaving Fyfe, suitably rebuffed, to continue sailing close to the wind, in 1917 especially, with his munitions tribunal adjudications on wages questions. Therefore nothing came of the suggestion as a war-time expedient, though as we shall see in the last chapter, the proposal was re-examined as part of a half-hearted review of the tribunal experiment at the close of the war. The conduct of wartime arbitration was therefore obviously too important to be left to the guidance of a devolved local body with legal powers to enforce virtually any kind of award, which might well disrupt national policy. Such matters had to be secured within guidelines over which the Industrial Commissioner's Department insisted upon retaining ultimate responsibility.

The only concession was that to prevent the possibility of positions becoming too deeply entrenched when both sides "stand on their dignity", and refuse to trigger the arbitration machinery, the

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<sup>60</sup> LAB 2/805/IC 5379, Askwith to Fyfe, August 3, 1917.



government itself could, from 1917, refer a dispute to the Board of Trade in order to mobilise Askwith's department.<sup>61</sup> But of course such suggestions were only palliatives which did not touch the core grievance - that the value of money was being eroded as rapidly as it was being earned and that the normal mechanism of market competition had been interrupted; besides which, the deterrent effect of punitive labour legislation had its limitations whether in time of war or in peace-time. No amount of tinkering with statutory arbitration provisions could dispute this finding.

By the last quarter of 1917, therefore, an air of militancy pervaded Clydeside. According to Gallacher, "Strikes were an almost everyday occurrence",<sup>62</sup> while the local Ministry of Munitions official in Glasgow, contemplating the ferment in the factories, was reporting that "... everything points to a big movement in October".<sup>63</sup> Obviously a number of forces were at work including the presence of the revitalized CWC, the skilled time workers' "grievance", the liberating influence of the proposed abolition of leaving certificates, the government drive for increased output accompanied by the extension of piece-work, and the premium bonus system which generated suspicion. More general features identified in the reports of the Commission on Industrial Unrest such as high food prices and the unequal distribution of food, the operation of the Military Service Acts, housing shortages and general exhaustion might also be cited.<sup>64</sup>

The course of the agitation on Clydeside in this period, which included the demand by the Emergency Committee of the Moulders at Parkhead Forge to extend the 12½% bonus to all workers employed at the plant, has been vividly described in Hinton's account,<sup>65</sup> while

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<sup>61</sup>Munitions of War Act 1917, s.6(2).

<sup>62</sup>Gallacher, op.cit., p. 168.

<sup>63</sup>Cited in Hinton, op.cit., p. 252.

<sup>64</sup>Cf., Labour Gazette, August 1917, p. 273.

<sup>65</sup>Hinton, op.cit., pp 250-4; 256-7.

some of the peripheral claims arising from the award have already been analysed (supra).

Into this whirlpool of industrial militancy stepped the munitions tribunal in Glasgow, intent on promoting industrial order in place of anarchy, on promoting "responsible" trade unionism, on patching up differences between major employers and their strategically important labour forces in such a way as to preserve those managerial prerogatives consistent with the ministry's corporatist aims and, if possible, to offer some positive hope for trade unionist applicants, even if only the prospect of further arbitration. Finally, it saw its task as the discouragement of rank-and-file militancy which repudiated the constitutionalism of trade union officials.

A suitable prelude to its involvement in the 12½% bonus agitation was the tribunal's handling of a major complaint lodged by the Workers' Union against Beardmore's shell factory in Paisley.<sup>66</sup> According to Robert Climie, the union's representative, 300 men at the factory had, for six weeks, been deprived of an output bonus granted to them by an arbitration award.<sup>67</sup> The company explained that they had written to the Board of Trade some ten days after the award, objecting to certain aspects and two weeks after that, the union had been told that no bonuses would be paid until the doubt was resolved. This, said the company, did not amount to a failure to pay the award; but in any case, it would be implemented forthwith. The union, nonetheless, pressed for a penalty, and a week later Sheriff Fyfe imposed a fine of £100 on the company, having calculated that at £5 a day per employee, the firm were theoretically liable to a fine . . .

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<sup>66</sup> Glasgow Herald, October 11, 1917.

<sup>67</sup> Cf., Labour Gazette, October 1917, p. 347 which refers to a bonus award which matches all the details cited in the tribunal report, except that the firm's Dalmuir plant and not the Paisley factory is mentioned. The failure to mention the shell works is probably an accidental omission in the Labour Ministry's publication.



of £54,000.<sup>68</sup>

The rationale of the chairman's decision was that the company had flouted the arbitration provisions of the Act which represented the quid pro quo for the prohibition of strikes, and that it was improper to enter into correspondence with the Board of Trade over the interpretation of the award, without first seeking the approval of the other party, the Workers' Union. Of course Fyfe might have added that the major concern was that no excuse should be offered to munitions workers to take industrial action.<sup>69</sup> Therefore, it was plainly imperative that there should be no delay in giving effect to awards, particularly those which, as in the present case, were considered by the tribunal to be unambiguous. It was difficult enough to restrain workers from taking action in response to delays in submitting claims to arbitration without having to tempt fate once an arbitration award had actually been issued. Presumably, reasoning of this nature underlay the exemplary fine of £100 imposed on the company which overshadowed by far any previous monetary penalty announced by the tribunal. Here again was a further illustration of Fyfe's drive to project the legislation as 'impartial' as between the 'two' sides of industry and that both were subject to equal sacrifices under the scheme. Employers, also, were to be subordinated to the overriding needs of the State and would incur punishment if in breach of the corporatist goals of unity and order. A prominent local shipowner, William Raeburn, might bewail that since the ironmoulders had not been prosecuted,<sup>70</sup> then there must be,

"...veritably one law for the employer and a different one for the employed... Because it is quite easy to catch an employer and make an example of him, but it is a very different story when you have thousands of workmen to deal with!"<sup>71</sup>

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<sup>68</sup> Glasgow Herald, October 18, 1917.

<sup>69</sup> Cf., the leading article in ibid.

<sup>70</sup> For the ironmoulders' strike, see ibid., September 28, 1917; Hinton, op.cit.

<sup>71</sup> Glasgow Herald, October 22, 1917.

Nonetheless, the ideological potential of a decision such as that involving the Beardmore Shell Factory at Paisley can be clearly gauged from a reply to Raeburn's complaint. This, in contrast, argued that,<sup>72</sup>

"... the one thing which has gained for the local tribunal in this district the respect and confidence of both employer and workman is the fearless manner in which the Munitions Act has been applied to both classes concerned, and the impartial way in which transgressors have been dealt with, irrespective of whether they were employers or workmen."

Whether such sentiments were broadly shared after the Clyde deportations and whether the imposition of a £100 fine on Beardmore's was perceived as contributing to a spirit of unity is obviously a matter on which it would be dangerous to be dogmatic. Nonetheless, one feature is clear. That is the prominent role which Beardmore's played in the history of the Glasgow munitions tribunal. There is, indeed, a certain irony in James Maxton's speech to the Labour Party conference in 1916 when he declared that,<sup>73</sup>

"In Parkhead Forge, where the men were well organised under a capable leader, there were practically no cases of men being brought before the Tribunal because the employers at Parkhead knew that, Munitions Act or no Munitions Act, if injustice was done to any of the workers, work would cease."

Admittedly, much of Beardmore's litigation had emanated from Dalmuir and that the case just discussed originated at the Paisley works of the firm. However, Parkhead itself was hardly immune from legal confrontations, as is indicated by the prosecution of David Hanton and nine others at the Forge, in the wake of the deportation strikes.

The strike movement in 1917-18 similarly was rooted in Parkhead where rank-and-file organisation was being resurrected. As Harry McShane has recently noted, the howitzer shop was a particular hot-bed of militancy.

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<sup>72</sup>Ibid., October 25, 1917.

<sup>73</sup>Labour Party, Annual Conference Report 1916, p.129.



"The men and the shop stewards there were among the most militant in Parkhead Forge. You could always rely on them to back you up; in fact it was difficult to keep them in sometimes because they stopped work for the most trivial reasons."<sup>74</sup>

Yet of prosecutions of striking munitions workers in pursuit of the 12½% bonus there were none; merely one paltry Ordering of Work prosecution against a number of youths in Motherwell long after the troubles had subsided.<sup>75</sup> Instead, the munitions tribunal was called upon simply to determine, in the wake of two of the succession of strikes at the Forge, whether those laid off were entitled to compensation when the company closed the works.

What had happened was that in the last few days before Hogmanay, the bricklayers and steel workers in the howitzer shop had walked out in support of the 12½%.<sup>76</sup> This was followed by a dispute<sup>77</sup> involving the gas-producermen in the Millmen's Union (i.e. the British Steel Smelters, Mill, Iron, Tinsplate and Kindred Trades Association). As it had not been settled by January 8, the date of the resumption of work after the New Year holidays, those who presented themselves for work that day were sent home, a process repeated on subsequent days. These included 159 ironmoulders, members of AIMS, who needed a supply of gas for the melting of metal for the foundry.<sup>78</sup> A complaint

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<sup>74</sup>McShane and Smith, op.cit., p.88.

<sup>75</sup>Twenty-three young steel workers aged between 15 and 17 were prosecuted under the Ordering of Work regulations for absenting themselves without leave on one night in March 1918 as part of their campaign for an extension of the bonus. They were fined between 20/- and 30/-. It is difficult to imagine a clearer indictment of the failure of the law to stamp out mass rank-and-file activity. See Glasgow Herald, March 29, 1918.

<sup>76</sup>Hinton, op.cit., p. 253.

<sup>77</sup>This was probably the issue referred to by Hinton when the bonus was extended to iron and steel workers at Parkhead in such a way as to merge with existing bonuses so that the net gain was just 6¼%. Therefore the dispute continued. See ibid., pp 253-4.

<sup>78</sup>AIMS, Monthly Report, March 1918, p.26; Glasgow Herald, February 6, 1918.

was therefore lodged with the tribunal to the effect that under the 1917 Act, the management had not merely suspended work (for which, since the repeal of the leaving certificate scheme, there was now no remedy) but had terminated the men's contracts by laying them off. And since under section 3(1) of the new Act each side was required to give a week's notice or payment in lieu, to end the contract, the union's president, James Fulton, claimed compensation for his members. The legal arguments were complex and have been explained elsewhere.<sup>79</sup> But the substance of Sheriff Fyfe's decision was that the management's action had amounted to a termination by it of the men's contracts for which a week's wages in lieu of notice were due. This decision was issued on February 5. But by this time a further stoppage had occurred as a result of the management locking out those steel workers threatening an overtime and weekend working ban and who had left the Steel Smelters' Union in protest against the failure to obtain the full 12½%. The Moulders' Emergency Committee which had led the stoppage in September now struck in support of the breakaway steel men, and again large numbers of workers, about 300 in different trade unions, were laid off,<sup>80</sup> and claimed compensation.

Though the first decision of February 5 was now under appeal to the Munitions Appeal Tribunal in Edinburgh, Sheriff Fyfe could hardly issue an inconsistent ruling in this second hearing conducted three weeks later. But the most striking feature of his judgment<sup>81</sup> was the manner in which he used the tribunal as a platform from which the Emergency Committee's activities might be condemned. He clearly pictured himself as waging a moral crusade in which "responsible" trades unionism was to be fêted while unconstitutional militancy was to

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<sup>79</sup>Rubin (1977b) op.cit., p.231.

<sup>80</sup>Hinton, op.cit., p. 254.

<sup>81</sup>Glasgow Herald, February 27, 1918.



publicly pilloried. For his munitions tribunal was not to be simply a crude measure of repression, but was, through the educative effects of bold pronouncements, to impart a message of loyalty to the "corporate spirit". Thus, he declared,<sup>82</sup>

"The intervention of this so-called Workers' Committee was quite unnecessary, and if it did not represent any substantial section of the workers, its intervention was impertinent, and was disloyal to the general body of workers as well as their own trade unions and to their employers. He was of opinion that this committee represented probably no-one but the so-called delegates who comprised it, or at best a very trifling proportion of the thousands of workers at Parkhead..."

Adding that all the applicants had disavowed the emergency committee and that none had "had any complicity in the threat-to-cease-work propaganda of that committee", he accordingly awarded them compensation.

It is difficult to resist the conclusion that Fyfe's judgment, which was later overruled by Lord Hunter in the Appeal Tribunal,<sup>83</sup> was informed by a belief that the authority of official trades unionism would thereby be enhanced if individual trade unionists who repudiated the emergency committee's actions, could be rewarded in such a way. Certainly his legal argument was open to serious questioning, so much so that even counsel for the trade unions, when the case went to appeal in Edinburgh, agreed that it was not worth defending.

His judgment therefore conforms to the distinct pattern of promoting order in industrial relations by reinforcing the bureaucratic structure of trade unions officially recognised and by seeking to eliminate causes of tension wherever this can be achieved without violence to the national interest as he understood it. It need hardly be said that Beardmore's sectional interest in minimising

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<sup>82</sup>Ibid.

<sup>83</sup>Ibid., March 29, 1918; AIMS, Monthly Report, July 1918, pp 128-9; William Beardmore & Co. Ltd. v George Miller et al; ibid v Daniel Brawley et al., 1918 SMAR 115-22, March 28, 1918.

labour costs determined their resistance to the men's claim and further explains why the question was taken to appeal.<sup>84</sup> But more difficult to explain is the view of the Ministry of Munitions which was represented at the appeal hearing. Thus,<sup>85</sup>

"The Solicitor-General who at the outset stated that the position of the Ministry was that of neutral, characterised the judgments both in reasoning and result as unsound, and submitted that they ought to be reversed."

It appears that, once again, the Ministry's need to maintain the cooperation of Beardmore's in the war effort was a pressing concern, as we have already noted in the affair involving Cmdr. Gibson and the Canadian leaving certificate cases. Thus shortly after Fyfe's first judgment on February 5, Askwith had a meeting with Sir William Beardmore during which the latter objected that Fyfe's ruling had "upset all acknowledged law and custom".<sup>86</sup> Not only would Parkhead incur expenditure of £50,000 in lay-off pay, but

"... if the principle worked, it was a direct inducement to other sections sympathetically to lay off".

Askwith sought to calm him down by remarking that he presumed Sir William "would employ the best counsel of the Scottish bar", who would advise whether any further appeal by way of case stated might be made in the event of Lord Hunter's upholding Fyfe's decision. Askwith clearly saw the force of Beardmore's complaint, informing his departmental colleagues that Fyfe's judgement,

"... would of course be a direct inducement to a small section of men to cause a strike and for another section to lay off and obtain pay for nothing."

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<sup>84</sup> Even today, guarantee week agreements tend to exclude entitlement when the lay-off is the result of industrial action. See G.R. Rubin, Wages and Salaries (London: Sweet & Maxwell, 1980) Ch.7.

<sup>85</sup> AIMS, Monthly Report, July 1918, p.128.

<sup>86</sup> LAB 2/213/IC1173, "Sir William Beardmore & Co; Munitions of War Act: Memorandum by Sir George Askwith re interview with Sir William Beardmore ... February 8, 1918."



It was therefore considered vital, at least for public consumption, for the appropriate government departments not only to endeavour to prevent such a potentially calamitous decision (Askwith was even thinking in terms of a rushed amendment to the Munitions Act) but to be seen to be taking a leading role. Thus despite severe reservations about kowtowing to a man whose pride, the Ministry of Labour advised the Cabinet, "should be put in its proper place",<sup>87</sup> an obsequious policy was, in this instance, followed. Thus the pacification of the leading Clydeside industrial baron was held to outweigh the minimal risk to social peace posed by an unfavourable ruling as to the entitlement of large numbers of trade unionists to a week's lay-off pay. Indeed had not such workmen already amply displayed their "loyalty" by presenting themselves for work while wholesale stoppages were occurring elsewhere? It is, nonetheless, strongly arguable that the more "mature" Sheriff Fyfe, with his epic battles with the Fairfield shipwrights and deportation strikers far behind him, was now closer to the pulse of the Clydeside labour movement than the Ministry of Munitions. Experience both of previous tribunal hearings and of the evidence presented to the frenetic sittings of the industrial unrest enquiry, recently concluded, undoubtedly mellowed his outlook and surely influenced his ruling in this crucial case.<sup>88</sup>

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<sup>87</sup> Rodney Lowe, "The Demand for a Ministry of Labour, its Establishment and Initial Role, 1916-1924", London PhD. 1975, p.81, citing a Ministry of Labour memorandum on "The Labour Situation on the Clyde, Feb 15, 1918."

<sup>88</sup> A case raising the identical question to that posed in the Beardmore clash was H. McGinnes et al. v Bow, MacLachlan & Co. Ltd. 1918 SMAR 129-31, July 2, 1918. When the platers at this Paisley shipyard struck on February 12, 1918 in sympathy with the platers and riveters in other Clyde shipyards, the platers' helpers were consequently laid off for a week and no compensation was recovered. The moulders lock-out at Parkhead had actually ceased the day before, but the shock waves were still passing through the Clyde district. For the case of a bricklayer's labourer at Parkhead Forge whose claim dragged on through the courts, possibly into 1921, see Glasgow Herald, November 3, 1920; LAB 2/697/SD436; MUN4/6393. The labourer, George Brown, disputed the amount of the arbitration award granted by Sir Thomas Munro as part of the 12½% movement and cited as defenders in the action, the Ministries of Labour and Munitions, the Iron and Steel Trades Confederation,

### Conclusion

The strategy for wage regulation pursued by the Glasgow munitions tribunal from the spring of 1916 until the Armistice was, at first, mystifying, confusing and contradictory. Thus one group of workers might be permitted to argue that its claim for inclusion in an arbitration award ought to be upheld by Sheriff Fyfe while another group would be sent packing to the Board of Trade with the observation that wage-fixing was not a task for the munitions tribunal. But appearances can be deceptive and on closer inspection of Sheriff Fyfe's deeds his motives began to take shape. Thus malcontents should be suppressed or rebuffed, <sup>if,</sup> in his estimation, they posed little threat to munitions output, whereas heaven and earth might be moved to satisfy more pressing claims. The law, itself, thus became a barometer of the social and political tensions of the moment, with judicial decision-making in the tribunal responsive to criteria such as the level of militancy or the relative importance of the class of work involved in the case. Thus if, in a formal sense, Sheriff Fyfe's wage regulation "policy" matched the haphazard policy set nationally, yet at a more fundamental level, it contained a rationale that was sensitive to the outside temperature.

Additionally, it is in a sense a tribute to the government's achievement in managing industrial conflict over wages that trade unionists were clamouring at the door of Sheriff Fyfe's munitions tribunal, to provide them with a ready-made remedy. That he

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88 (cont'd) the Amalgamated Society of Steel and Iron Workers and the employers' association, the Scottish Steel Makers' Wages Association. He eventually lost his case and the Ministry of Munitions finally abandoned its efforts to recover its costs of almost £50, as Brown appeared to have been financed by his fellow-workers at the Forge. Finally, the ASE district delegate reported ruefully in January 1919 that claims for the 12½% and 7½% were still being received. But as the relevant provisions of the Munitions Act had been repealed, there was little hope of such claims being met. See ASE, Monthly Journal and Report, January 1919, p.21.



frequently re-directed them to arbitration in no way lessens the significance of the government's strategy. Indeed, the fact that the trade unions showed themselves to be opportunist and resourceful in their employment of the tribunal displays how successful the government in fact was, in incorporating the unions at the local level into the overall scheme of containment. Thus while propagandists might argue that the only defence against the Munitions Act was determined local organisation, especially if conducted on a joint trades basis, the response was commonly mounted on a constitutional basis through the munitions tribunal. Given the propensity of law to individualise conflict, the result was that union continued, effectively, to be split from union, and united action a rare, though not wholly abandoned, phenomenon. In this analysis, the government could have few complaints over the activities of the Glasgow tribunal, even if less keen eyes might interpret the unions' badgering of the tribunal as unwelcome efforts to pressurise it into wage concessions.

Indeed, at two further levels, employers and government might look upon the wage regulation activities of the munitions tribunal with an air of satisfaction. First, wage struggles conducted through the constitutional machinery of the state were a welcome antidote to revolutionary politics. The munitions tribunal had had few contacts with, in the words of the Scottish industrial unrest commissioners, that,

"... revolutionary element within the unions [which was] trying to undermine the authority of the official executive councils and district committees in order to further their own extreme views."<sup>89</sup>

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<sup>89</sup>P.P. 1917-18, XV, 133, para. 2.

When, however, such opponents of the "corporate spirit"<sup>90</sup> were prosecuted by the tribunal, they were severely dealt with; while on numerous occasions, the authority of official trades unionism was cultivated and reinforced by Sheriff Fyfe. Thus the Parkhead Workers' Emergency Committee was, in a most blatant fashion, treated contemptuously by the sheriff as a wholly unrepresentative, fractious and "impertinent" body whose attempts to "speed up the union officials" by industrial action, he condemned vociferously. In contrast, the lodging by union officials of complaints of failure by employers to implement awards only served to lock tighter into the existing corporatist framework of munitions production, the mass of the rank-and-file within the unions whose leaders had long since reserved their places in the great adventure.

But there was yet a further dimension to the wages question, which the focus of the munitions tribunal on the enforcement of arbitration awards suitably diverted from the public gaze. That was that a catalogue of individual grievances, especially in respect to the fixing of piecework rates, or premium bonus times, was hidden from view.

"The employer", an angry New Statesman pointed out,<sup>91</sup> "still asserts his absolute right to decide, by his foreman or rate-fixer, what sum shall be allowed for each job, varying as it constantly does, in size or shape or content, from the last job. The matter usually concerns directly only one worker, who is deprived of his freedom to refuse the employer's arbitrary terms. Yet neither the Ministry of Munitions nor the Committee on Production has been able or willing to intervene in these innumerable separate cases all over the country ... and the worker, forbidden to refuse the job at the employer's price, feels delivered, disarmed, to the tender mercies of firms who (as the Minister of Munitions has publicly confessed) have repeatedly "cut" these piecework rates as soon as the worker has been lured on to piecework speed and effort ... The workers (especially the women) have to submit in silence. But they do not forget."

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<sup>90</sup> Ibid., para 6.

<sup>91</sup> New Statesman, July 28, 1917, p. 389.



They did not forget at Barrow, for example, where rate-cutting produced a major engineering stoppage by well-organised cadres.<sup>92</sup> But such organisational advantages were lacking elsewhere, leaving individuals exposed to the predatory instincts of cost-conscious rate-fixers appointed by management, and not, as in other trades such as mining and brassworking, appointed jointly or by the unions alone.<sup>93</sup>

Inasmuch as the munitions tribunal was perceived to be busily engaged on processing collective wage disputes, the insidious weakening of the individual worker's position remained less visible. Here indeed might be an illustration of the more effective exercise of "power" by employers, by virtue of the subtle exclusion of an issue from the tribunal's agenda.<sup>94</sup>

On the other hand, there was another side of the coin of wages struggle. That is that they were frequently mediated through strike action. Nonetheless, the air of confidence with which the civil servants at the Ministry of Munitions reported proudly to Lloyd George in early December 1915 on their prowess in preventing stoppages<sup>95</sup> only slowly dissipated as the war progressed. Some close observers believed that compared with 1915, 1916 fared well in keeping the strike statistics below the previous year's figures. Thus according to Wolfe, the situation concerning strikes was "more steady" than in 1915,<sup>96</sup> while according to Addison it was only the Hargreaves strike in Sheffield in November 1916, "which broke the spell of industrial peace which fell on the workshops of Britain

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<sup>92</sup> Ibid., April 7, 1917, pp 6-7; Hinton, op.cit., pp 185-9; Glasgow Herald, March 24, April 2, 4, 1917.

<sup>93</sup> New Statesman, September 23, 1916, p 583; ibid., June 9, 1917, p. 222; ibid., June 23, 1917, p. 270.

<sup>94</sup> Steven Lukes, Power (London: Macmillan, 1974).

<sup>95</sup> Bev. III, 13, f. 80.

<sup>96</sup> Wolfe, op.cit., p. 133.

after the defeat of the Clyde strikes..."<sup>97</sup> Various reasons were advanced, such as the modifications to the Munitions Act, the attack on the CWC, an optimistic view of the military situation and the working of the compulsory arbitration machinery.

But it is clear that such a judgment was premature. Even on Clydeside, "cleansed" for a time of the subversive influence of the CWC, strikes erupted with a disconcerting frequency as we have already recorded. "Serious in 1916, the labor unrest seemed to be getting out of hand in 1917".<sup>98</sup> It appears that about three-quarters of the 1841 strikes reported to the Board of Trade during the period of the Munitions Acts concerned questions of wages.<sup>99</sup> No doubt a large proportion of such strikes were unlawful, theoretically rendering the strikers liable to penalties. But even as early as October 1915, following the South Wales strike and the Fairfield shipwrights' epic drama,

"There were those among the Labour leaders who were moved to point out that when they asked for amendments by constitutional methods, nothing was done, whereas a strike or a threat of a strike was electric in its effect."<sup>100</sup>

How much more so in the case of rank-and-file unionists pursuing more mundane wage grievances. As we have seen, even Sheriff Fyfe in his capacity as industrial unrest commissioner, was driven to recognise this lesson. The fact was that conflict was endemic. Overwhelmingly, transient phenomena were blamed. Thus it was,

"... no easy task to eliminate high prices, restrictions on personal freedom, industrial fatigue and lack of confidence in the Government and in some of the trade union leaders without creating a worse situation." <sup>101</sup>

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<sup>97</sup>Cited Hurwitz, op.cit., p. 278.

<sup>98</sup>Ibid., p. 279.

<sup>99</sup>Moses, "Compulsory Arbitration in Great Britain during the War", op.cit. p. 893.

<sup>100</sup>Wolfe, op.cit., p.130.

<sup>101</sup>Hurwitz, op.cit., p. 279.



More radical critics attributed the labour ferment to profounder causes. Thus, the New Statesman remarked,<sup>102</sup>

"We have no panacea to offer for Industrial Unrest. The changing status of the wage-earner necessarily involves a further retirement, very gradually and possibly even slowly, from the position of autocracy in the factory which the employer has inherited..."

Whatever the analysis might be, and revolution was discounted on all sides, the government's attitude to strikes was hopefully to prevent them, formally to ban them, and realistically to compromise over them. As the War Cabinet instructed in 1918, "If an imminent strike appeared to be inevitable all the concessions asked for should be granted".<sup>103</sup> It was an attitude probably shared by all the production departments of state which confronted industrial questions, though the disregard for principle would no doubt have appalled Askwith.<sup>104</sup>

Of course, a small number of strikers were prosecuted before the munitions tribunals, but after the deportation strikes, hardly any stoppage of national significance resulted in such a case being brought. Prosecutions for minor infractions of the law against strikes were all that might be risked. In the case of those stoppages which the government alleged contained a political element, then "public" opinion as expressed through the media, and occasionally by means of DORA prosecutions, were relied upon.<sup>105</sup> In the case of the latter, however, the charges might rapidly be abandoned once the rank-and-file and the public, as in the May 1917 strikes, had been duped into believing that the government were acting firmly against the political conspirators.<sup>106</sup> The reality was that, as the Glasgow Herald recognized,<sup>107</sup>

<sup>102</sup> New Statesman, June 23, 1917, p. 270.

<sup>103</sup> Cited in Lowe (1982), op.cit., at p. 116.

<sup>104</sup> Eric Wigham, Strikes and the Government 1893-1974 (London: Macmillan, 1976), pp. 37-8.

<sup>105</sup> Wolfe, op.cit., p. 136. See chapter one, note 103.

<sup>106</sup> Cf., Glasgow Herald, May 25, 1917.

<sup>107</sup> Ibid., May 19, 1917.

"In all their dealings with Labour, the Government seem to have two obsessions. The first is that the veil of secrecy must be drawn around every dispute, large or small, as long as possible ; and the second is that the official policy must be that of cajoling and temporising, explaining here and beseeching there... It is little wonder if in these circumstances the restless elements in Labour act as though they believed that the Government's bark would continue to be worse than their bite..."

Yet the lessons might run deeper. Subjected to entreaties by a government whose motives were suspected, suspicious, also, of employers and their profits and indeed of their own leadership, it was likely, said the Glasgow Herald, that,<sup>108</sup>

"... all those who do the labour of the country will demand, and will have to obtain, a larger share in its government and a larger share in the profits of their own industry than they have ever had in the past."

But even this programme might not go far enough to satisfy Labour's thrust for power, stimulated by a war experience which projected the image of the state in a new light.<sup>109</sup> At a far more parochial level, elements of the working of the munitions tribunal, an institution spawned by the state, might be a suggestive pointer for the future. In spite of the frequent observations of Sheriff Fyfe on the place of managerial functions and prerogative rights, which appeared to identify the tribunal as a normally reliable ally of the employing class, the machinery could on a number of occasions be turned against the latter. At one level, state, law and the capitalist class were closely identified with one another. But they were not identical to each other. There existed no mechanistic relationship of substructure to superstructure, but a more subtle

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<sup>108</sup>Ibid., May 15, 1917.

<sup>109</sup>Cf., Winter, Socialism and the Challenge of War, op.cit., passim.



interface of state and economy: not a competitive capitalist, but a corporatist munitions enterprise. Yet it was the beginnings of a vision which could broaden out to embrace a corporatist economy whose commanding heights Labour might capture in the name of the state. Thus if the experience of the war and, at a local level, the lesser experience of wage regulation by the munitions tribunal, suggested that Labour might lay claim to the machinery of power, then the constitution of 1918 was not to be understood as a recipe for the *guration of* socialism.

It signified merely the dropping of one pilot at the helm of the corporatist state, and the taking on board of a different one to steer an amended version of the self-same ship of state.<sup>110</sup>

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<sup>110</sup>The impact of the legislation on Fyfe's political thinking would be a fascinating question. One would hazard that prior to the war, he had been a strongly paternalist Conservative. Cf., chapter three, infra.

## CHAPTER EIGHT

### Factory Discipline and Tribunal Proceedings<sup>1</sup>

#### Introduction

In recent years belated attention has begun to focus on the importance of managerial strategies and structures in determining the pattern of industrial relations within an industrial society. Emphasis has thus been placed on various typologies which seek to explain developments in management-employee relations<sup>2</sup>. These may identify distinct stages through which the pattern of control, purportedly exercised by capital over labour, is said to pass. For example, the typology presented by Woodward postulates, first, "personal supervision" accompanied by the gradual evolution of a distinct managerial strategy. This is followed by "mechanical control", exercised through machines and by the production process itself. Finally, comes the stage of "administrative control" mediated through impersonal rules which stipulate acceptable or unacceptable behaviour<sup>3</sup>. An advance on this theory is that recently propounded by Friedman who points to the alternatives of "direct control" achieved by coercion and by close supervision, and "responsible autonomy" granted to workers. This latter entails a greater element of worker self-discipline by seeking a more "cooptive" spirit within the enterprise. The beauty of this typology is that it rejects the concept of "stages".

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<sup>1</sup>For the position in respect to women, see chapter ten.

<sup>2</sup>See H.F. Gospel, "Managerial Structure and Strategies: An Introduction" in H. Gospel and C. Littler (eds.) Managerial Strategies and Industrial Relations: An Historical and Comparative Study (London: Heinemann, 1983).

<sup>3</sup>Cf. the typology presented by Edwards which closely matches that of Woodward. His three stages are "simple", "technical" and "bureaucratic" control. See Gospel, *ibid.*, pp 4-5, citing J. Woodward (ed.) Industrial Organisation: Behaviour and Control (1970) and R. Edwards, Contested Terrain: The Transformation of the Workplace in the Twentieth Century (1979).



Managerial control strategies may revert to those previously discarded if the perceived situation as determined by product or labour market pressures so dictates. To the extent that any managerial strategies can be identified on the part of Clydeside employers during the war, Friedman's conceptualization<sup>3A</sup> seems more apposite than the "stages" theories of other writers.

Nonetheless, there are important caveats which must be borne in mind when analysing concrete instances involving the enforcement of factory discipline. Thus the point has been made that such typologies are "often overschematic and deterministic"<sup>4</sup>. We take this to mean that not only do they ignore the discretionary element in the decision whether to enforce a disciplinary rule. They also appear to assume that such managerial strategies ultimately prove effective in achieving management goals. Yet,

"... what is a disciplinary issue depends in part on what management care to treat as such. This itself will depend on the interest they have in controlling any particular aspect of employee behaviour and on their use, habitual or otherwise, of disciplinary rules to control behaviour. But it will also depend on whether employees collectively allow an issue to be treated as an individual one. This in turn will depend on their bargaining interests, strength and history."<sup>5</sup>

The inference to be drawn from such an analysis is that the depiction of management disciplinary policies by some recent writers as reflecting an historical shift from a "punitive" to a "corrective" approach<sup>6</sup> is deficient in several respects; not least in the sense that

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<sup>3A</sup> Gospel, ibid., p 5, citing A. Friedman, Industry and Labour (1977).

<sup>4</sup> Ibid., p 12

<sup>5</sup> M. Mellish and N. Collis-Squires, "Legal and Social Norms in Discipline and Dismissal", Industrial Law Journal, Vol.5, 1976, pp 164-77, at p 172.

<sup>6</sup> See, for example, R.T. Ashdown and K.H. Baker, In Working Order: A Study of Industrial Discipline, Dept. of Employment, Manpower Paper No.6, (London: HMSO, 1973) pp 5-7.

an educational and a reformative intention underlay the so-called punitive policies pursued by the factory masters of the Industrial Revolution<sup>7</sup>. Thus too much emphasis is placed on procedures at the expense of substantive rules. Secondly, formal rules tend to be stressed whereas the role of custom and practice in governing such matters is liable to be neglected. Thirdly, a managerial perspective tends to dominate, even where joint union-management administration is promoted. Thus, discipline is taken for granted as a problem for management of worker misconduct, and the motives of workers and the meanings which they might attach to their behaviour receive scant consideration. Finally, discipline is divorced from wider questions of control, and what may otherwise be collective issues are transformed (with the assistance of the legal process, one might add) into individual matters<sup>8</sup>.

These are weighty criticisms, which, it is hoped, will be built into the following account of factory discipline in the munitions establishments on Clydeside. There is, nonetheless, an impenetrable black box which might be said to haunt aspects of this study. This is that it is sometimes impossible to know precisely what occurred on the shop floor in respect to the enforcement of discipline. An intelligent reconstruction can, of course, be attempted; but only intensive fieldwork or particularly rich primary sources can adequately recreate the daily routines of factory work, factory pressures and factory discipline.

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<sup>7</sup>See Sidney Pollard, The Genesis of Modern Management (Harmondsworth: Penguin, 1968) pp 213-31; Neil McKendrick, "Josiah Wedgwood and Factory Discipline", Historical Journal, Vol. IV, 1961, pp 30-55.

<sup>8</sup>Mellish and Collis-Squires, op.cit., pp 167-72.



Neither of these features is, unfortunately, available for tapping. What is known, however, is that war workers' grievances concerning discipline, and, in particular, in respect to the new oppressive works rules framed under the authority of the Munitions Act, were rife. The monthly and quarterly reports of local trade union officials constantly bewailed the new disciplinary regime, while prosecutions were, naturally, also a matter of record. But beyond these points, difficulties emerge. Firstly, in respect to the success or otherwise of works rules in establishing "good order" or diligent working, or in stamping out or reducing lawlessness, whether in the shape of smoking, gambling, drinking, sleeping on duty or bad timekeeping, the statistics for lost time in controlled establishments, or the numbers prosecuted cannot authoritatively establish more general propositions concerning discipline. For not only is it difficult to obtain accurate figures for offences committed but not reported, or to agree upon the criteria of measurement and thence to interpret such findings usefully. But, as stated earlier, it cannot always be assumed that forms of behaviour, defined in a particular factory at any point in time as a disciplinary matter, were so defined elsewhere, or at a different time in the same factory, even by employers, let alone by the workers themselves. For the relative power positions of the parties will themselves often define what is the current state of disciplinary reality, thereby possibly supplanting the "official" reality of the Ordering of Work rules under the Act. Thus as will be seen, some establishments even considered that such rules were irrelevant to their situations and would refuse to implement them, having no doubt weighed up the industrial relations implications before so deciding. Thus from Newcastle, it was reported that<sup>9</sup>,

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<sup>9</sup>Clarion, February 11, 1916.

"... it was a common sight to see a night worker roll in drunk, find a quiet corner and sleep till the next meal-time: that packs of cards, books and newspapers were extensively used to while away the time: and that females took in spirits too, and cake to fill in the afternoons. I asked, 'What about the foremen?'. I was told that they joined in: they were as bad as the others."

How pervasive such occurrences were, it is obviously difficult to say. Employers or foremen were highly unlikely to disclose to the ministry their complicity in such practices, or otherwise to draw attention to their abdication of managerial responsibility for discipline. What is clear is the complexity of the issues surrounding discipline. Thus, the managerialist perspective is seen as only one dimension to a phenomenon whose obverse is the possible existence of a tolerated culture or norm of "deviance"; indeed an index or manifestation of industrial conflict itself<sup>10</sup>.

As Hyman has recently reminded us, there is widespread neglect of<sup>11</sup>,

"... the extent to which practices, which for employers are 'grossly inefficient' may be efficient means to the distinctive goals of the 'human resources' (i.e. workers) who sustain them; or the possibility that increased control by shop floor workers may alter the operation of production in ways which are highly rational in the light of their own interests, however much they may obstruct the intentions of planners within companies or government agencies .... The consequence of this ambivalent orientation to the concepts of rationality and efficiency is to bestow special endorsement on the 'logic' inherent in capitalist production; another is to confine within somewhat narrow limits the extent to which workers' interests may be recognised as diverging from those of the employer."

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<sup>10</sup> Cf. Alan Fox, Industrial Sociology and Industrial Relations (London: HMSO, 1966) p 8.

<sup>11</sup> Richard Hyman, "Pluralism, Procedural Consensus and Collective Bargaining", British Journal of Industrial Relations, Vol. XVI, 1978, pp 16-40, at p 25. He was responding, in particular, to observations by the late Allan Flanders.



For the most part, of course, workers' objectives, inspired by patriotism, did ultimately accommodate themselves to those of the State. In this respect, there was little attempt to confound national policy by pursuing "distinctive goals". What was manifested, however, was the persistence of conduct, defined officially as irrational but which in fact amounted to a reinterpretation of the "logic" within capitalist production from a less authoritarian viewpoint.

Notwithstanding, one has to point out that examples abound of the ruthless enforcement of petty rules by employers during the war. Indeed, such a practice perhaps corresponded to Friedman's conceptualization of direct control or to an admixture of the first and third elements in Woodward's typology; that is to direct supervision and to the enforcement of impersonal, administrative rules. Respecting the latter a select committee investigating the operation of the truck legislation in 1908 had heard a factory inspector complain that she had had constant experience of fines being imposed by employers on their employees for such actions as sneezing, laughing, singing and wearing hair curlers ("that is a very frequent source of fines of 6d. and 1/-"). One West End dressmaker fined her girls if they came down the stairs in pairs; presumably such behaviour was considered too undignified for this particular boutique<sup>12</sup>. Yet during the war, similar systems of fining employees were reported elsewhere, for example, at a firm in Aylesbury which manufactured horse rugs and nose bags. Penalties included a fine of 5/- for stamping another's time card and 1/- for "wasting time in the lavatory".<sup>13</sup> At the Trades Union Congress in 1916, a resolution

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<sup>12</sup>Cited in Sugarman, Palmer and Rubin, "Crime, Law and Authority etc.", op.cit., at p 114.

<sup>13</sup>Solidarity, December 1917, p 2.

was passed, unanimously condemning the system of fining in the textile and other industries<sup>14</sup>. In particular, the mover of the resolution, J.W. Ogden of the Amalgamated Weavers<sup>15</sup>, urged every operative "to resist all attempts to make them assentors to and participators in the system" by acquiescing in the application of the fines extracted to some charitable object. He concluded<sup>16</sup>,

"We object to any money being collected for that purpose in this way for our people. We say the employer has no right to take the money from his workpeople in the first instance."

As we shall see, the critical consciousness evinced by this resolution, which rejected the legitimacy of a system of fines for offences against managerial authority, generally failed to inform the criticisms levelled against the Ordering of Work regulations under the Munitions Act. In the case of the latter, the sense of patriotism no doubt played a considerable role. However, the fact that, faced with a determined and litigious management, little alternative existed for trade unionists but to seek to comply with the provisions, suggests that idealist explanations may not fully account for trade union compliance with those authoritarian assumptions underlying the wartime disciplinary provisions. Indeed, in one tribunal hearing in February 1917, the Workers' Union official, Robert Climie, having long since come to terms with the statutory code, was heard to complain, when one establishment decided it was more convenient to institute their own domestic disciplinary procedure, that "the firm by their action were usurping the functions

<sup>14</sup>Trades Union Congress, Annual Report 1916, p 375.

<sup>15</sup>Ogden was originally nominated as the union representative in the Scotland division of the Commission for Industrial Unrest in 1917. He was replaced before the sittings began.

<sup>16</sup>Trades Union Congress, op.cit.



of the tribunals"<sup>17</sup>.

Notwithstanding the direct approach through prosecutions, the pursuit of discipline in the factories, with the object of maximizing munitions output, was undertaken by the authorities (at various intervals the Ministry of Munitions, Admiralty, employers, munitions tribunals and even trade unions) by the adoption of a variety of techniques of persuasion. These ranged from responsible autonomy to direct control, from crude repression to financial bribery. Moreover, this diversity itself pointed to the intractability of the authorities' problem of order, a complete solution to which proved elusive and which, in turn, stimulated enquiries into the causes of lost time. Nonetheless, despite the authorities' uncertainty, the legitimacy of managerially imposed discipline was not in question to any significant extent, among those subject to that discipline, a tribute perhaps to the strength of corporate sentiment in inculcating those values of "good order" enshrined in the Ordering of Work regulations. The roots of that patriotic strength are, as hinted earlier, to be discovered partly in the dull compulsion of economic society bearing on the workman for whom no alternative was in prospect. But it surely also is to be located within the sphere of social theory, and in particular in the Gramscian concept of hegemony which imposes itself through the cultural domination of capitalist society. The dichotomization of these apparently antithetical modes of analysis which appears in recent literature<sup>18</sup> is viewed with scepticism in this chapter where both types of explanation are taken to possess validity.

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<sup>17</sup> Glasgow Herald, February 8, 1917. The distance from the works to the tribunal, entailing lengthy travelling time, was given as the reason by the firm for setting up their own procedure. The tribunal hearing was to adjudge leaving certificate applications.

<sup>18</sup> N. Abercrombie and B.S. Turner, "The Dominant Ideology Thesis", British Journal of Sociology, Vol. 29, 1978, pp 149-70 explore this dichotomization.

The diversity of persuasive techniques, which had, incidentally, the effect in certain contexts of 'delegalizing' the law, can be illustrated initially by the character of the authorities' campaign against bad timekeeping and, on a slightly different plane, by the campaign against drunkenness which assumed the dimension of a moral crusade, albeit with a sting in its tail. The Ministry of Munitions was expected to be in the vanguard of the assault upon working class lawlessness, the employers were to provide the ammunition (in the shape of information) to sustain the assault, while the trade unions, watching from the sidelines, delivered exhortations to their members to be on their best behaviour. It was indeed true that in their pursuit of remedial measures to counteract bad timekeeping and other misdemeanours, the authorities adopted what was clearly a "corrective" approach in singling out errant workers for interview and prosecution. But such was how the authorities, and certain trade union officials, saw the issue: as a "problem" of recalcitrant individuals flouting formalized and relatively uncontroversial rules.

Finally, by way of introduction, we may note that where the intention was to cheapen labour, to introduce systematic overtime, to permit the spread of piecework<sup>19</sup>, or the employment of handymen and

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<sup>19</sup>Wolfe, Labour Supply and Regulation, op.cit., pp 176-7 who points out that theoretically both the Ordering of Work provision in the Munitions Act, that is, section 4(5), and section 4(3), which demanded the lifting of restrictive practices, could be applied against a union ban on piecework. He suggests, erroneously in fact, that, "The battle between time and piece work was fought either under 4(3) or as a general wage issue": ibid., p 177. See later for examples of the use of section 4(5) in this area. For union opposition to piece work during the war, see, for example, S. Higenbottam, Our Society's History (Manchester: Amalgamated Society of Woodworkers, 1939) pp 192-3.



non-unionists; that is, to reopen the contested claims within engineering between managerial prerogatives on the one hand and workshop control on the other<sup>20</sup>, the Ordering of Work regulations, if not wholly absent, were certainly less in evidence as instruments of management control. For these objectives, little reliance was in fact placed on legal measures at all, including the provisions in section 4(3) which, on paper, authorized the lifting of pre-war practices. Such matters might be governed by custom and practice rules which proved impervious to legal measures. Indeed, when taken to the munitions tribunals under the auspices of the Ordering of Work regulations, employers' complaints of breach of the regulations might not always receive fulsome support from tribunals suspicious of any attempts by employers to deploy the legal machinery for their own domestic advantages. Thus the English Appeal Tribunal quashed the decision of a Wolverhampton tribunal which had found time workers in a national factory guilty of disobeying a lawful order when they refused to go on to piecework unless guaranteed a certain sum per week<sup>21</sup>. Yet in a Scottish hearing<sup>22</sup>, involving the attempt by an employer to transfer piece workers onto urgent time work after the regular time worker had been taken ill, the accused were found guilty of disobeying a lawful order. Indeed, said the tribunal chairman<sup>23</sup>,

"... the refusal to obey that reasonable order was a subversion of discipline, and if tolerated, would have been injurious to the national interests."

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<sup>20</sup>Jonathan Zeitlin, "The Labour Strategies of British Engineering Employers, 1890-1922", in Gospel and Littler (eds.), *op.cit.*, pp 27-28.

<sup>21</sup>Fagan v National Projectile Factory (1917) 2 MAR 75-82, May 4, 1917.

<sup>22</sup>Lawrence Shaw and Anr. v John G. Stein & Co. Ltd., 1917, SMAR 87-8, June 25, 1917.

<sup>23</sup>Ibid.

If, however, the ratio decidendi of this case were confined to "urgent" situations, such as occurred here, the incursion of the Ordering of Work regulations into workshop controls is seen to be limited<sup>24</sup>. Thus the policy of prosecutions under the regulations failed to bite hard into those workshop practices which continued to enjoy grassroots support, such as opposition to compulsory overtime or to the intensification of the pace of work for which few successful prosecutions for failing to work "diligently" were recorded. This failure naturally helps to explain why these rules did not generate as much criticism from Clydeside as elsewhere. The local employers were, simply, reluctant to use them for more controversial aims, such as the advancement of dilution, possibly reflecting the same sense of frustration which they experienced at the initial failure to make the dilution breakthrough at Lang's of Johnstone<sup>25</sup>, while the Balfour-Macassey Commission, for example, made no reference to the disciplinary regulations in its report.

Thus, in the final analysis, the attempt to enforce successfully the Ordering of Work regulations by the employers and tribunal in Glasgow was dependant, first, on the existence of a united frame of reference - to advance the national interest - on the part of the tribunal, of the prosecutor and of the trade unions themselves. Good

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<sup>24</sup> Whether the case represented where the balance of workshop control ought to lie in peacetime is an open question. There were only a couple of unimportant Glasgow cases on the question. In one, a workman in charge of young employees in a steel works left the premises and refused to re-examine tubes wrongly passed by them. See Glasgow Herald, October 12, 1915. In another case, six caulkers at D. & W. Henderson & Co. Ltd. were found not guilty of refusing to work on a vessel till a difference concerning terms of employment had been settled. See ibid., February 24, 1916. For their subsequent leaving certificate applications, see ibid., February 28, 1916.

<sup>25</sup> Hinton, The First Shop Stewards' Movement, op.cit., pp 67-8; McLean, The Legend of Red Clydeside, op.cit., pp 37-40.



timekeeping, good order, sobriety, 'working diligently', were all qualities which, as well as being of benefit to trade unions promoting continued membership, thrift and friendly society benefits, were likely to attract general social approval as unqualified human goods, from third parties engaged in 'total' war. But their capacity to achieve universal approbation from, inter alia, trade unionists themselves is surely because they defined reality authoritatively and officially; so that any other form of behaviour was (and is) conceived as deviant or subversive. Prima facie neutral, such prescriptive rules were, in part at least, value-laden. The success of the authorities' campaign was therefore to be measured in terms not only of the outcome of prosecutions or of the efforts of the ministry's interviewers, but also in respect to the battle of ideas<sup>26</sup>.

Thus the issues upon which the legal challenge was mounted were, in a sense, self-selected as being invested with a moral quality. Whether mediated through tribunal rulings or through their pervasive influence on the shop floor<sup>27</sup>, the Ordering of Work rules imposed themselves upon a limited category of 'offenders', especially bad time-keepers, and those guilty of intoxication; particularly where, as in

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<sup>26</sup>The struggle for control of language, of consciousness and of how problems are conceptualized is of course a pressing concern for social historians. See, for example, the literature cited in Joseph Melling, "'Non-Commissioned Officers': British Employers and their Supervisory Workers, 1880-1920", Social History, Vol. 5, 1980, pp 183-221, at pp 185-7.

<sup>27</sup>Cf., the following newspaper editorial on the displaying of the regulations in the factories: "The placard is more effective than speeches or articles, for it is always on view. It remains for reference after it has passed the first and second reading; also, and this is not unimportant, it recites the penalty of neglect or disobedience". See Glasgow Herald, August 30, 1915.

process industries, other groups of workers were thrown idle when offenders went AWOL. The rules therefore struck only at the easiest and most visible of targets which policing could entrap. The "control" of industrial relations by employers proved more elusive.

### Defining Reality

There is little doubt that bad timekeeping was perceived by employers and Ministry of Munitions alike as the most pressing and deep-rooted disciplinary "problem" with which they had to wrestle during the war, possibly even a greater threat than trade union hostility to dilution. In order to eradicate it, resort was had to a variety of techniques of persuasion, from the stick of tribunal prosecution to the carrot of good timekeeping bonuses. Yet despite earnest appeals, even from trade unionists' own local officials, to reduce "avoidable" bad timekeeping, the "problem" proved incapable of complete solution, particularly when the nature of that problem was redefined officially to embrace "unavoidable" causes such as inadequate transport to work, insufficient accommodation, bad weather, sickness and accidents. Thus, on the one hand, one ministry official, in a survey of lost time, argued that<sup>28</sup>,

"... the most potent [avoidable cause] is indifference which springs largely from the natural independence of the British workman, from temperamental laziness and from the mental apathy so often found among the ill-educated and the illiterate"

Thus a combination of the romanticized spirit of the free-born Englishman and of moral culpability is the principal explanation, proffered by this official. Why this personal shortcoming should, however, afflict, in his own figures, "perhaps not more than 10 or 15% of the total number of workers"<sup>29</sup>, he did not say. Notwithstanding, the possible connection

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<sup>28</sup>Bev. V, 21, ff 144-52, "Memorandum on the causes of bad timekeeping at controlled establishments, June 8, 1916, by H.O.Quin."

<sup>29</sup>Ibid.



between officially avoidable bad timekeeping on the one hand and war weariness and the state of morale on the other<sup>30</sup>, among a predominantly patriotic workforce committed to military victory, cannot be brushed aside easily. The authorities, possibly glimpsing this insight, were thus obliged to respond to offences in a manner calculated, as the Birmingham tribunal put it in 1917, "not to drive men away from work altogether"<sup>31</sup>. Thus were developed the subtle and varied means of persuasion designed to handle an often delicate situation involving the weighing up of the appropriate mix of coercion and concession.

The first shots in the propaganda battle had of course been fired before the Munitions Act had even been passed, with the publication, first, of the Committee on Production's report on broken squads<sup>32</sup>, and then the appearance of the notorious white paper of May 1915, the Report and Statistics of Bad Time kept in Shipbuilding, Munitions and Transport Areas<sup>33</sup>. This document purported to indict Labour for unpatriotic conduct in maintaining poor timekeeping records on the basis of partial evidence supplied by the shipbuilders and government officials<sup>34</sup>.

<sup>30</sup>Modern research, as we noted previously, has toyed with the idea that absenteeism is an aspect of industrial conflict. Alternative approaches stress the existence of a norm of accepted absence, pointing either to an "absence culture" or to a more dynamic orientation implying the "pragmatic acceptance" of the existing order. For a review see P.T. Allen, "Size of Workforce, Morale and Absenteeism: A Re-examination", British Journal of Industrial Relations, Vol. XX, 1982, pp 83-100, at pp 83-7.

<sup>31</sup>OHMM, Vol. V, Part III, p 144.

<sup>32</sup>USB, Monthly Report, July 1915, pp 17-18; see also the Shipbuilder, Vol. 12, March 1915, p 123.

<sup>33</sup>P.P. 1914-16 (220) LV, 947.

<sup>34</sup>Wrigley, David Lloyd George and the British Labour Movement, op.cit., p 108; Wolfe, op.cit., p 173.

But though designed to expose the "drink problem" among munitions workers, a careful reading showed that (as even a director of Cammell Laird admitted)<sup>35</sup>,

"... on the whole, timekeeping was better than before the war, but not so good as it should be. Employers were asking too much and getting too little. Men could not work overtime and on Saturday afternoons and Sundays continuously."

Part of the reason for bad timekeeping was that the "men preferred to work for double pay on Sundays and stay out some other day", or else just work till they had earned sufficient wages for the week<sup>36</sup>.

Disruption of work schedules was therefore inevitable, though the lesson surely pointed to the urgency of controlling both the level of wages and labour mobility rather than to the need for penal measures against bad timekeepers. Moreover, the position in the armament firms and in government establishments similarly cast doubt on the widespread existence of a national scandal. Thus, though much time was said to be avoidably lost in certain works, yet in the armament firms, "the great majority of the workmen were above reproach and their action was praiseworthy"<sup>37</sup>, while in the government factories, Isaac Mitchell of the Board of Trade reported categorically that irregular attendance did not exist<sup>38</sup>.

But just as Lloyd George could exploit the alleged shell shortage, so also could scarcely substantiated accusations of bad timekeeping generate a moral panic demanding the drastic remedy of legal compulsion.

<sup>35</sup>OHMM, Vol. I, Part IV, p 46.

<sup>36</sup>Ibid.

<sup>37</sup>Ibid.

<sup>38</sup>Ibid.



"The other point of the Bill", he told the Commons,<sup>39</sup> "is that we take power to establish discipline in the workshops. Here, again, we discussed this matter with the trade union representatives, and we are not going beyond the agreement we have entered into. They admit that where men who voluntarily go into this army habitually absent themselves and make bad time when they know that the work is very urgent for the country, there ought to be some means of enforcing better time. It is proposed that there should be a Munitions Court set up ..."

It was a characteristically duplicitous argument. A grossly exaggerated picture of unsatisfactory behaviour affecting, exclusively, war munitions volunteers, is painted. It is then used as a justification for the more general application of draconian provisions to which Labour, through its cooperative trade union leadership, is taken to have assented.

#### Bad Timekeeping Remedies

From this specious premise, the authorities attempted to monitor the record of timekeeping of major firms. Thus the Ministry of Munitions was reporting in December 1915 that of 536 firms surveyed, 148 complained of bad timekeeping. Of these 148, 80 complaints were directed against individuals and not against groups of workmen. Yet the ministry considered, somewhat surprisingly, that these results were gratifying. Perhaps they had been duped by their own rhetoric. Even the Admiralty, normally severe in its criticism of the performance of Labour, reported marked improvements over earlier reports<sup>40</sup>. In a

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<sup>39</sup>H.C. Deb., 5th Series, Vol. 72, cols. 1202-3, June 23, 1915.

<sup>40</sup>Bev. II, 8, ff 123-4, "Preliminary draft, revised draft and final draft of Report of Labour Department, prepared for Minister of Munitions, December 2, 1915." For earlier reports covering various months in the second half of 1915 see Bev. III, 1, ff 2-6; IV, 6, ff 26-7; IV, 37, f 284; IV, 37, ff 306-7; IV, 37, f 327.

statistical survey of 1500 firms in March 1916, over 500 responded to the invitation to offer general comments<sup>41</sup>. These showed that 319 establishments considered their timekeeping records to be "excellent" or "exceptionally good" or "satisfactory on the whole". Another 161 firms reported no complaints or no serious complaints or that timekeeping was "fairly good". Twenty-nine said the position was "normal" or "qualifiedly fair", while 42 reported "bad" or "not very good" timekeeping. These results, the Ministry thought, were "remarkable". Indeed it may not be unreasonable to infer that bad timekeeping was not considered even problematic by the 1000 companies which declined to offer general remarks on the matter. The following table shows the small scale of the "problem" about which so much hot air had been ventilated by employers in the earlier part of the war but which, as we shall see, did not abate in subsequent months and years.

TABLE 8.1  
Timekeeping Returns to Questionnaire  
for Week Ending March 17, 1916

Loss Expressed as Percentage of Total Normal Working Hours	Number of Firms Responsible	Percentage of Total Cases Analysed
10% and over	26	1.73
7% and up to 10%	43	2.87
5% and up to 7%	72	4.80
Below 5% but over 20% of employees losing over 6 hours per week	11	0.73
Below 5%	1348	89.87
Total Cases Analysed	1500	100.00

Source: Bev. V, 19, f 113.

<sup>41</sup>Bev. V, 19, ff 139-42. Firms whose employees lost more than 5% of normal time were considered to be the problem cases. Those from Glasgow included Barclay Curle; the Clydebridge Steel Works; Charles Connell & Co.Ltd., shipbuilders; Dunlop Bremner & Co.Ltd.; Harland & Wolff; A&J Inglis Ltd.; Lang's of Johnstone; Lobnitz & Co.Ltd., P & W McLellan Ltd.; and Stewart & Lloyd's Phoenix Tube Works. Fairfield is thus conspicuous by its absence in spite of the adverse report from Bartellot cited in McLean (1983) *op.cit.*, p 41. For the above "sin" list, see Bev. V, 19, ff 115-37.



The overwhelming majority of employees thus lost less than 5% of their normal working hours which, if based on a 54 hour week, would amount to losses of less than 2.7 hours per week. In fact a follow-up survey in May 1916 showed that the average loss per employee was 1.74 hours per week.<sup>42</sup> Thus it was clear where ministry pressure ought to be exerted. But it was also clear that the perceived "improvement" in timekeeping during the previous 12 months was somewhat of an optical illusion in the sense that the ministry, for propaganda purposes, had originally exaggerated the reports of poor timekeeping in order to secure compulsion. Once having achieved that objective, the ministry's energies were pressed into bribing, coaxing, cajoling, threatening and prosecuting workers to keep good time.

#### The Carrot

Positive incentives to maintain good timekeeping invariably took the form of bonus payments. For example, in November 1915, one Hull firm paid its brass founders and finishers a 2/- per week bonus if they maintained "generally good" timekeeping; while a firm in Pershore, near Worcester, granted a 7½% bonus on weekly rates if each worker completed an ordinary week of 50 hours before overtime began to count<sup>43</sup>. Shanks & Co. Ltd., Arbroath, reported in March 1916 that the bonus had resulted in no time being avoidably lost, though some men "always" lost time<sup>44</sup>. It is clear that the initiative for such arrangements often sprang from the trade unions. For example, in the Clyde district, an overtime ban was imposed in 1915 to enforce just such a departure<sup>45</sup>. But such schemes frequently

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<sup>42</sup>Bev. V, 19, ff 139-42, op.cit.

<sup>43</sup>Bev. IV, 37, ff 327-8, "Lost Time: Intelligence Report, November 25, 1915".

<sup>44</sup>Bev. V, 21, f 154.

<sup>45</sup>CSA, Minute Book No.9, August 14, 1915.

encountered difficulties. Thus, in the autumn of 1918, claims were submitted to a number of firms in Glasgow, including Weir's of Cathcart, for the payment of bonuses, on the ground that other firms in the district, such as Howden's and Mirrlees Watson & Co., had adopted the practice. However, the Ministry of Munitions stepped in to forbid the practice as an unauthorized wage rate alteration, an intervention which the employers' association no doubt welcomed as an opportunity to merge all timekeeping bonuses within any future national wage advance<sup>46</sup>. This would, of course, reduce the burden of the latter. Unions also objected to the practice of employers in attaching good timekeeping conditions to the payment of bonuses on output. This was, for example, the practice at the large Mossend Projectile Factory in Glasgow until negotiations resulted in the removal of the offending timekeeping conditions<sup>47</sup>. Most significant, perhaps, was the case of collective timekeeping schemes which sought to foster the "responsible autonomy" conceptualized by Friedman. These, however, tended only to add to the frustrations of munitions workers who saw their bonuses disappear as a result of the failure of fellow-workers to maintain good time. The tensions associated with the disruption of output schedules, followed by the consequent withdrawal of output bonuses, were thus replicated in the case of collective timekeeping bonuses<sup>48</sup>. Nonetheless, the replies of employers to ministry questionnaires clearly indicated the value which employers attached to such bonuses as an aid to good timekeeping among their work force.

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<sup>46</sup>NWETEA, Minute Book, No.9, September 9, October 10, 1918; cf., ibid., November 4, 1918 and ibid., Minute Book No. 10, December 9, 1918; also ASE, Monthly Journal and Report, June 1918, p.31 concerning Messrs. Whitehead Aircraft Co. at Richmond and Feltham.

<sup>47</sup>Ibid., March 1918, p 20.

<sup>48</sup>Cf., ibid., November 1916, p 41 where negotiations at a Chelmsford firm resulted in the employers agreeing that only "systematic bad time-keepers" should be penalised instead of the collective bonus being withheld.



### The Stick

Virtually every scheme to encourage improved timekeeping was, however, premised on the wielding of the stick rather than the carrot. On the financial side, this might take the form of withholding the above time-keeping bonuses. Another widely employed expedient by companies was the practice of quartering; that is, refusing to allow late arrivals to start work till after the breakfast break even if the workmen involved were, say, only four minutes late in clocking-in<sup>49</sup>. One ministry official reported that<sup>50</sup>,

"In some places there would seem to be what almost constitutes a custom of staying away from work up to breakfast time on Monday."

However, it was noted that the extreme strictness of some works rules made the situation more acute. Clearly, there were difficult problems in maintaining the authority of the employer in such circumstances. Thus it was recognized that a strict rule must<sup>51</sup>,

"... sometimes work harshly and may unnecessarily increase broken time, but there would seem to be a conviction in many quarters that any relaxation of the Rules of admission would be abused, and that the only safety lies in insisting on rigorous punctuality. In this, there is undoubtedly much truth, but the wisest policy would nevertheless seem to be one which would combine general strictness with reasonable laxness in exceptional cases ..."

Indeed, when Beardmore's at Dalmuir decided to cut the period of grace from an hour to half-an-hour in the case of those workers arriving late for the night shift, the yard's shop stewards' committee, in a rush

<sup>49</sup>NWETEA, Minute Book No. 10, November 28, December 24, 1918.

<sup>50</sup>Bev.. V, 21, ff 144-52, op.cit.

<sup>51</sup>Ibid. Indeed, it might in passing, be said that the last sentence accurately portrays the general policy towards the Munitions Act pursued by the Glasgow tribunal, with the added observation that the "exceptional cases" gradually regressed to the mean.

of constitutional blood to the head, reported the management to the tribunal. Thus, they complained that the company had contravened Schedule II to the Munitions Act which required that,

"Due notice shall be given to the workmen concerned wherever practicable of any changes of working conditions which it is desired to introduce ..."

In the event, both Sheriff Fyfe and Lord Hunter in the Appeal Court held that the complaint must fail in that there had been no change of working conditions, inasmuch as the time of commencing work remained the same<sup>52</sup>.

The decision was, of course, somewhat pedantic and ignored the "rule-making" scope of custom and practice. Yet much of the interest in the case lies in the fact that it was a shop stewards' committee representing 300 workers, and not the official trade union which complained to the tribunal. Indeed, as Sheriff Fyfe pointed out, the attitude of the trade union itself was not known to the tribunal, though it is reasonable to conclude that it may have been ambivalent at seeing an unofficial committee stealing its constitutional thunder. Perhaps that fact influenced his ruling that the committee had no locus standi, though Lord Hunter, in awarding a pyrrhic victory to the committee, took the opposite view. Unfortunately, there is no indication from the available sources as to the broader context of the episode. Yet the irony of a Glasgow shop stewards' committee petitioning the munitions tribunal at the same time as the "May Strikes" were beginning to expand outwards from Manchester<sup>53</sup> would not have been lost on William Gallacher, already pessimistic about the prospects for the strike movement.<sup>54</sup>

<sup>52</sup>William Orr et al., v William Beardmore & Co. Ltd., 1917 SMAR, pp 99-101; Glasgow Herald, May 3, 18; June 29, 1917.

<sup>53</sup>Hinton, op.cit., p 200.

<sup>54</sup>Ibid., pp 202-3, 205.



In 1917, a survey of munitions tribunals<sup>55</sup> pointed to varying customs among firms as to the practice of prosecuting for lost quarters. At Leeds, it was said that great importance was attached to the rules, for otherwise there would be an "entire lack of discipline without such strictness". Nonetheless, it was reported, many employers in the area allowed 15 to 30 minutes grace. At Birmingham, the local practice was said to range from exclusion for half-an-hour to the whole day. In such extreme cases, the tribunal chairman, Frank Tillyard, would frequently "invite" the employer to make provision for elasticity, lest he should be compelled to dismiss the charge or grant a leaving certificate. At Liverpool, on the other hand, it was thought that locking-out, which was common in the shipyards was, by itself, an insufficient penalty, thus suggesting that prosecutions would be favourably received by the tribunal.

The Admiralty did, in fact, address itself to the issue and inclined towards the view advanced by the official at the Ministry of Munitions, cited earlier, H.O. Quin. Thus it sought to moderate the excesses of employers in this respect by recommending that defaulters be permitted to start work on their arrival and to lose only a quarter or half-an-hour's pay as the case might be<sup>56</sup>. The unions, for their part, sought to negotiate starting-time allowances in view of the difficulties often encountered in getting to work<sup>57</sup>. Closely related was the proposal that overtime rates be withheld until a "normal" weekly stint had been

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<sup>55</sup>OHMM, Vol. V, Part III, p 144.

<sup>56</sup>ASCJ, Journal, December 1916, p 778; USB, Monthly Report, December 1916, p 42.

<sup>57</sup>Cf., ASE, Monthly Journal and Report, December 1915, pp 45-6.

worked<sup>58</sup>. Thus the tribunal clerk who had attended at the Cammell Laird prosecution in October 1915, (presumably Edgar Sanders, the local justices' clerk) argued that overtime earnings more than made up for the loss of wages through quartering<sup>59</sup>; and for good measure, he added that the men were already earning sufficient income<sup>60</sup>. Therefore, he advised that a rule be framed forbidding overtime unless a minimum number of hours had been worked in the week. If this was impossible, then the extra overtime rate should be illegal if the first quarter had not been worked. In those circumstances, a refusal to work overtime should constitute an offence<sup>61</sup>. The Admiralty gave every encouragement to the tribunal clerk's first suggestion, though it never become enforceable as a rule of law, per se<sup>62</sup>.

The fact was that such a provision was inconsistent with the drive to maximise the hours on the clock during which munitions work might be performed. Thus when three engineers at Messrs. Shanks & Co. at Johnstone were prosecuted for going AWOL one Saturday and for refusing to work overtime on the following Monday and Tuesday, they justified

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<sup>58</sup>On overtime generally, see Hammond, British Labor Conditions etc., op.cit., pp 119-24.

<sup>59</sup>Bev. IV, 37, f 283, "Intelligence Report, November 11, 1915.

<sup>60</sup>This of course was part of the folklore in which Sheriff Fyfe also apparently believed. Thus to one shipyard worker, he declared "I suppose you are making as much as you want and don't need to bother?" See Glasgow Herald, October 18, 1916.

<sup>61</sup>Cf., Bev. V, 18, ff 110-1 for Ministry of Munitions and Admiralty correspondence with the Shipbuilding Employers' Federation; also Noel Peck of Barclay Curle, in NWETEA, Minute Book No. 8, September 18, 1916.

<sup>62</sup>Cf., ASCJ, op.cit. where it was incorporated in the Admiralty's scheme for improved timekeeping.



their refusal to work overtime on the ground that they would not get the customary time and a half rates unless they worked the full 54 hour week<sup>63</sup>. This, they explained, could not be achieved in view of their having remained off work on the Saturday. The previous day, the Friday, had been the autumn holiday in Johnstone, and they had sought permission, but had been refused, to take the whole weekend off. If it were not for the restrictive rule, they would thus have undertaken the overtime on the Monday and Tuesday.

The Ordering of Work rule therefore provided simply that a "reasonable amount" of overtime be worked, and was not thereby encumbered with exceptions and qualifications such as proposed above<sup>64</sup>, and which might render the provision inconsistent with the policy objective of maximising munitions output. Thus it was probably left vague deliberately as much to eliminate inconsistencies as to prevent the hostile criticism that it was a prescription for industrial conscription. But little litigation on the point was generated on Clydeside, the only significant case relating to 16 bricklayers at a Lanarkshire steel works who were charged with refusing to work overtime one Saturday afternoon<sup>65</sup>. Owen Coyle, for the men, admitted to a technical breach, but pointed out that they had been asked to stay on only at noon that day. Surely, said Coyle, the foreman must have known previously of the need for Saturday overtime and ought to have given more warning. Though a verdict of guilty was recorded - for authority and the law had to be upheld - Sheriff Fyfe significantly added that "the rules also inferred that the employer was to act reasonably".

<sup>63</sup>Glasgow Herald, October 15, 1915.

<sup>64</sup>See also CSA, Minute Book No. 10, September 12, 1916 where the Admiralty scheme was declared "impracticable" and which suggested that legal enforcement of the recommendation was required.

<sup>65</sup>Glasgow Herald, December 22, 1916.

Finally, where an employer attempted to compel overtime to prevent a district official from attending a union general meeting, the union, the Scottish Ironmoulders, immediately contacted the Ministry of Munitions before waiting for any prosecution to take place<sup>66</sup>. If there was any recurrence, the union was told, it was to draw the attention of the firm to a ministry intimation to the effect that they "did not anticipate any difficulty will be raised" by the firm in permitting reasonable time off for trade union duties.

Thus it seems that if systematic overtime was introduced in Clyde-side munitions establishments, and the evidence is unclear on this point, the labour force either accepted it willingly or capitulated long before the matter ever reached the tribunal. They were clearly not bludgeoned into submission by coercive prosecutions, though this is not to deny that they may have been intimidated by the threat of prosecutions. Yet the litany of grievances paraded before the Balfour-Macassey Commission in 1915 and the Scottish industrial unrest commissioners in 1917 fails to pinpoint systematic overtime as a collective grievance forced upon munitions workers by foremen flushed with a sense of power deriving from the Munitions Act. In this respect, perhaps the munitions tribunal experience in Glasgow is an accurate index of the significance of the issue of compulsory overtime.

#### Military Conscription

The most drastic weapon with which the authorities could maintain discipline, and which even overshadowed the threat of a tribunal prosecution was, of course, the threat of call-up. Logically, this matter should be examined in the final section of this account of the measures of coercion available; but it is convenient to examine it briefly at this stage before looking more closely at tribunal prosecutions themselves.

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<sup>66</sup>AIMS, Monthly Report, March 1916, p 22.



Though a further account of the relationship between the Munitions Act and military conscription is offered in chapter nine, dealing with leaving certificates, the importance attached by employers to compulsory enlistment as a means of eradicating bad timekeeping is shown in the remarks made by a deputation of Clyde engineers and shipbuilders to A.J. Balfour, First Lord of the Treasury. They demanded that<sup>67</sup>,

"... the Government should consider whether workmen who habitually lost time should be allowed to maintain War Badges, and also whether the Military or other Authorities should not be instructed to challenge workmen wearing badges who were found idling outside the yards during working hours."

As Sheriff Fyfe told two apprentice caulkers found guilty of the dreadful deed<sup>68</sup>,

"Both of you earn £2:10/- a week and are unmarried. But you have not ambition enough to stick at your work. I think it is high time some of you bad time-keepers had your badges taken off and were sent to the front. That is what is needed with some of you."

Such judicial invocations for more draconian powers which could, not implausibly, amount to a power to determine questions of life and death, could hitherto be dismissed as the scandalized appeals of frustrated and impotent moral improvers, occupying the benches of the tribunals. But with the onset of the comb-out in 1918, the prospect of a fiercer campaign against bad timekeepers, with the barbed wire of the Western Front awaiting them, loomed larger. In June 1918, the Clydeside marine engineers met representatives from the Office of Controller-General of Merchant and Warship Building<sup>69</sup>. At this meeting, Sir Alexander Gracie of Fairfield's told Sir Robert Horne (then 3rd Civil Lord; later Minister of Labour) that it was desirable to depart from the present call to the

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<sup>67</sup>NWETE, Minute Book No. 8, September 20, 1916.

<sup>68</sup>Glasgow Herald, October 18, 1916.

<sup>69</sup>NWETE, Minute Book No. 9, June 24, 1918.

colours, and to take only bad timekeepers. Past results, he claimed, had shown that this had had a positive effect on other workers, while A.E. Stephen of Alexander Stephen & Co. Ltd., complained of the prevalence of men stopping work before the whistle blew. Horne replied that such men should be brought before the Enlistment Complaints Committee and if this had no effect then exemption certificates could be withdrawn. Since this committee was ostensibly designed to investigate allegations of improper enlistment or of victimization by employers in withdrawing badges, it is clear that the committee was being hijacked for a purpose radically different to that originally envisaged<sup>70</sup>. Although by the beginning of 1918 only a small number of timekeeping cases had been reported to the committees, including a negligible number from government establishments over the previous six months, this, it was alleged, was due to a failure by the authorities to use the machinery, rather than to a cessation of bad timekeeping<sup>71</sup>. The probability, is, however, that while the threat of banishment to the Front received prominence, the authorities would not wish to provoke a further confrontation with the unions on the Hargreaves scale by actually sending men to the Front because of their bad timekeeping - or at least doing so in circumstances where reactions were likely to occur. As a weapon designed to ensure adequate standards of timekeeping, the threat of call-

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<sup>70</sup>For the Enlistment Complaints Committees, see ABIS, 1st Quarterly Report, January - March 1917, pp 2235-7; USB, Monthly Report, May 1917, pp 15-17; ibid., July 1917, pp 9, 31; Glasgow Herald, May 5, 1917. R.M. Martin points out that the committees, with a fair sprinkling of labour nominees, "were judged an unqualified success" by the ministry historians, though the author seems unaware of the activities of the committees discussed in this chapter. See R.M. Martin, TUC: The Growth of a Pressure Group, 1868-1976 (Oxford: Clarendon Press, 1980), p 138.

<sup>71</sup>MUN5/91/345/112, "Memorandum on the Removal of Protection from Recruitment from Men who are Consistent Bad Timekeepers, January 22, 1918".



up was probably of limited effectiveness in practice. The severity of the sanction was such as to render it less credible as a tool of persuasion than a lesser instrument by which to maintain discipline.

The Employers Have It Both Ways

It was one of the peculiarities of that brand of legislation which contained fragments of corporatist philosophy, but which also retained elements of pluralism, that the parties directly involved did not always seem particularly keen on implementing its disciplinary provisions. Thus at the outset, the Ministry of Munitions was encouraging employers to take action to stamp out disorder while the employers were just as energetically placing the onus on the ministry to mount prosecutions,

"... on the ground that the offence was rather against the State than the individual employer."<sup>72</sup>

Indeed, even some unions, for their part, gave reluctant indication of being willing to fill the vacuum, in a non-accusatorial capacity, by seeking to instil in their members the necessity for constancy and devotion to duty. Nonetheless, despite such mutual vacillations, what emerged was a combined, if disjointed, effort to "deal" with what was construed officially as a "problem", though in fact more and more responsibility gradually devolved on the state.

Thus the elimination of employers' discretion in undertaking prosecutions, whether based on their own domestic rules or on the ministry's model rules, was indicative of two features. First, it reflected unease on the part of the ministry that employers might abuse, or, what was worse, be considered by unions to be abusing, their right to prosecute. Such behaviour by employers might thus be seen to

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<sup>72</sup>Wolfe, op.cit., p 177.

encourage yet more labour unrest. One senior ministry official saw the difficulty in this way<sup>73</sup>:

"It is no doubt necessary in the interests of the State to have the industrial discipline of the Munitions of War Act, but the difficulty of the present position is that the exceptional disciplinary powers are, or may appear at the present time, to be exercised by or on behalf of the employers, rather than by or on behalf of the State."

Thus it was to counter suspicions that the employers' motives were not inspired by anything so noble as patriotism, that the instituting of state prosecutions was encouraged. But the shift was, secondly, also a response to employers' own dissatisfaction at being asked to enforce the discipline of the state. This is not to say that employers objected to prosecutions. It was just that, apart from the time and trouble involved, they would prefer not to be exposed to adverse criticism whether from their own workforce or even, on occasions, from tribunal chairmen, for having sought to enforce the law. Thus the Clyde engineers and shipbuilders decided to inform the ministry that it was "objectionable to have complaints against workmen at the instance of firms"<sup>74</sup>. Since it was confirmed by James Paterson, who attended part of the meeting where this decision was taken, that the ministry were now prepared to undertake prosecutions on the basis of the newly issued model rules, the Clyde employers requested local firms to send to the associations details of bad timekeeping. These would then be sifted and selected complaints forwarded to Paterson with a request that the ministry institute a prosecution. In this way, it was reasoned, the relations

<sup>73</sup>MUN5/20/221.1/40, "Amending Bill - 'Reciprocity' and Local Committees, December 1, 1915". There is no indication as to which official drafted this document. It was, however, undoubtedly one of the senior men, probably Wolff or Beveridge.

<sup>74</sup>CSA, Minute Book No.9, September 28, 1915.



between employers and workers, and especially those between foremen and workmen, would not be unduly strained, particularly where, as sometimes occurred in Glasgow during the second half of 1915, the tribunal hearing itself was disorderly and fines were ordered to be deducted from the men's wages by their employers<sup>75</sup>. Indeed, a year later the joint Clyde employers were telling C.F. Rey from the Ministry of Munitions that<sup>76</sup>,

"If the Ministry would apply the penal provisions of the Munitions of War Act and make the workmen work full-time, more especially in the shipyards, greatly increased production would be secured."

Such requests are not, it is submitted, to be construed as evidence of rampant lawlessness on the factory floor. There was, as the ministry surveys revealed, a hard core of bad timekeeping which was officially attributed to "indifference" or to "laziness" (though of course, such "explanations" merely beg the question). But for the employers, ritual

<sup>75</sup>MUN5/353/349/1, op.cit. According to Melling, op.cit., (1980) p 214, "The most direct consequence of the Munitions Act was to transform those foremen in controlled establishments into ambassadors of a servile state as well as the agents of unwelcome innovations". Leaving aside the appropriate theoretical perspective on the state, it is more arguable, first, whether their relationships to their workmen was fundamentally transformed and second whether this had a major impact on the pattern of workshop discipline. There were, of course, generalized complaints against the "tactless and domineering methods of some foremen" (cited Melling, ibid., p 216) but the evidence, as Melling notes (ibid., p 215) is ambiguous. Also there were some tribunal prosecutions where foremen had been assaulted. (Glasgow Herald, January 16, 1917) or insulted (ibid., February 16, 1916; Kilmarnock tribunal) but the offenders usually attributed their actions to drink. One suspects, therefore, that if tighter discipline was imposed by foremen, resistance was more muted than the evidence from major confrontations discussed in chapter four, or from commissions of enquiry, suggests.

<sup>76</sup>CSA, Minute Book No. 9, August 30, 1916. Cf., ibid., July 3, 1916, where Vice Admiral Johnston-Stewart, the Admiralty representative, promised that prosecutions for bad timekeeping would be dealt with more expeditiously in the future. Also, ibid., May 18, 1916: joint employers' meeting after visit of Sir Maurice Levy of the ministry.

offences required the ritual demand for penal remedies. In general, their bark was worse than their bite. The fact that they continually turned to the ministry to take the matter in hand is, itself, indirect confirmation of this situation.

#### The Interview Technique

The ministry placed much reliance on interviewing alleged bad timekeepers, threatening them with a prosecution if their timekeeping did not improve. The scheme apparently originated in the recognition by the ministry that firms were reluctant to prosecute young workers or apprentices<sup>77</sup>. The ministry therefore undertook to send standard warning letter to those singled out by the employers, and later extended the practice to all alleged defaulters<sup>78</sup>. The next step was to institute a formal system of interviewing workers identified by their firms as bad timekeepers. Thus the Ministry would instruct its labour officers to monitor the timekeeping records of those munitions workers against whom complaints had been made by their employers. A complete card-index system was maintained for this purpose, backed up by visits to companies and by interviews with those against whom complaints had been lodged<sup>79</sup>.

<sup>77</sup>Bev. IV, 6, f 27, "Model Ordering of Work Rules" (n.d., about early September 1915).

<sup>78</sup>This caused some difficulty to employers towards the end of the war when they claimed that the letters sent by the ministry implied that the initiative had come from the employers, not the ministry. They pointed out that their employees, in a state of pique, simply left the firm on receipt of such letters. The wording was therefore altered to make it clear that the employers were absolved from any responsibility for instigating the complaints. Yet it is difficult to see from where else the prompting came. See NWETE, Minute Book No.9, June 10, July 30, 1918.

<sup>79</sup>MUN5/91/345/6, "Memorandum on the Duties of the Timekeeping Branch of the Chief Investigation Officers' Office, February 6, 1918".



The culmination was a ministry prosecution in selected cases<sup>80</sup>. It was, however, stressed that the investigation officer,

"... must on no account act in such a way as to give grounds for complaint of undue interference in the affairs of the management,"<sup>81</sup>

an indication, perhaps, of the peculiar blend of corporatism and pluralism which political expediency demanded.

This approach was "adopted systematically"<sup>82</sup> on Clydeside with a view to determining whether a warning by the representative of the state would suffice or whether a prosecution was necessary. James Paterson, for example, reported in December 1915 that during the previous few weeks, he and his colleagues, Cramond and Matson, had interviewed a large number of men<sup>83</sup>. Thus 60 had been summoned to his office the previous evening and, there, they were told that if the employer did not report any improvement in their timekeeping then a prosecution would follow. Those within five miles of the office in Glasgow were called in at night, while those in Paisley, Greenock and Dumbarton districts were "taken in batches"; though, formerly, Cramond and Matson would themselves travel out of town for this purpose<sup>84</sup>.

It is, however, clear from the numbers of ministry prosecutions that such warnings were not wholly successful in curbing loss of time

<sup>80</sup>MUN5/91/345/109, "Instructions as to preparing prosecutions on behalf of the Ministry of Munitions for breach of a Works Regulation under s.4(5) of the Munitions of War Act, March 1, 1917".

<sup>81</sup>MUN5/91/345/110, "Instructions to Investigating Officers concerning timekeeping, Sunday Labour and overtime, December 7, 1916".

<sup>82</sup>Bev. II, 8, ff 123-4, op.cit; OHMM, Vol. IV, Part II, p 33.

<sup>83</sup>Bev. II, 8, ff 126-7.

<sup>84</sup>Interviews were conducted in the town halls rather than in the labour exchanges so as not to damage the "image" of the latter. See Bev. II, 8, f 78.

on Clydeside. In October and November 1915, mass prosecutions were conducted almost fortnightly, with shipyard workers being the most prominent offenders<sup>85</sup>, a feature no doubt due to the strong sense of independence, autonomy and indispensability among such workers. From 1916, however, the pace of such ministry prosecutions slackened considerably<sup>86</sup> as the inefficacy of the measure became more apparent, as the "scientific" search for explanations was undertaken, and as the trade unions were brought more directly into the disciplinary process.

#### The Incorporation of the Trade Unions

Potentially more effective from the ministry's point of view was to enlist the men's trade unions in their efforts to reduce lost time. Thus, the senior ministry official who, as noted earlier, expressed concern at the state's failure to impose itself as the appropriate prosecuting agency, considered that<sup>87</sup>,

"It will be quite possible, and indeed highly desirable, that [the Ministry prosecutor] should act with the assistance of representatives of the workmen in the establishment".

Every offender would therefore appear before the ministry official, the workmen's representative, and the company's manager, to ascertain whether more drastic steps were required.

"In effect", continued the ministry official<sup>88</sup>, "we should substitute Shop Committees under the presidency of the Government official, for the Joint Local Committee of employers and workmen."

<sup>85</sup>See Glasgow Herald, October 15, 29, November 17, 1915.

<sup>86</sup>Ibid., February 9, October 18, December 15, 1916.

<sup>87</sup>MUN5/20/221.1/40, op.cit.

<sup>88</sup>Ibid.



Similarly, local labour advisory boards could be asked to interview offenders, with the added sanction that if repeated breaches occurred, which merited a prosecution, the trade unionist would be unable to call upon his union to defend him<sup>89</sup>. An Admiralty scheme to incorporate the trade unions into the disciplinary process was even more ambitious. Thus it was proposed that those shipyard workers habitually losing seven or more hours per week, without adequate cause, should in the first instance receive a warning letter from the Admiralty, followed by a personal warning delivered both by the Admiralty officer, by the offender's employer and by his own union representative. More significantly, it was proposed<sup>90</sup>,

"3. That the employers and Trade Unions should cooperate as fully as possible ... in disciplinary action against offenders",

while the unions should enter into consultations on the meaning of the phrase "habitual offenders" for the purposes of imposing sanctions. Finally, those whose timekeeping records did not improve, should be prosecuted "forthwith", dismissed from employment, and also be expelled from their unions.

Though the assumption of such a function in disciplining their own members appeared to cast trade unions in a role diametrically opposite to their raison d'être, such an outcome was both theoretically inevitable within an embryonic corporatist framework, and also the logical outcome of the incessant exhortations by union officials to their members to ensure that "responsible" timekeeping was maintained. These officials included the ASE delegate for the North-West, R.O. Jones who, as we

<sup>89</sup>Glasgow Herald, December 22, 1916; Bev. IV, 37, f 229, "Dilution Subcommittee, Intelligence Report for week October 26, 1915."

<sup>90</sup>ASCJ, op.cit.; USB, op.cit.

have seen in chapter two, had vociferously condemned in the most uncompromising terms, the framing by employers of the new works rules.

Within a few months, however, he was complaining that<sup>91</sup>,

"Some of our members are not keeping as good time as they are capable of doing",

and exhorting his members to "suppress the evil" and to be "beyond reproach" in respect to timekeeping<sup>92</sup>.

Meetings with employers on the introduction and working of clocking-in schemes were also arranged<sup>93</sup>, though some resistance to particular schemes did take place, for example, at Swan Hunter's yard on Tyneside<sup>94</sup>. At Vickers, in London, the management produced evidence of men forgetting to clock-in, action which the ASE delegate, A.B. Swales, considered "cannot be justified by our society or any other"<sup>95</sup>. Indeed a number of prosecutions for fraud were conducted in 1916 against men accused of falsifying their time cards or of slipping out of the yard and persuading other workers to lodge their cards in the time-box at the

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<sup>91</sup>ASE, Monthly Journal and Report, January 1916, p 38.

<sup>92</sup>Ibid., November 1915, p 46.

<sup>93</sup>Ibid., August 1916, p 34.

<sup>94</sup>ABIS, 1st Quarterly Report, January - March 1917.

<sup>95</sup>ASE, Monthly Journal and Report, October 1915, p 39. At least a conference was a less aggressive response than the ministry's initial proposal to the firm to prosecute a couple of workmen in early July 1915 under the Conspiracy and Protection of Property Act 1875. The ground of the proceedings was to be that the men's bad timekeeping (and therefore a breach of contract) was endangering the lives of the soldiers at the Front, by delaying the output of munitions. The advice was rapidly withdrawn once the Ordering of Work regulations were published. See MUN4/13, "Re Vickers Ltd. and Loss of time. Note by Professor Geldart, July 8, 1915."



end of the shift<sup>96</sup>. Trade unions kept their heads down on this issue, even when one Beardmore worker was imprisoned for 30 days following a trial at Govan Police Court<sup>97</sup>.

Within the Shipwrights' Association, similar pleas for an improvement in timekeeping were heard. Thus the Ireland technical adviser (i.e. district officer) complained that<sup>98</sup>,

"... whilst the majority of our members are doing splendidly, there is a minority who are not doing what might be done in this respect."

Only where one firm prosecuted an employee without first delivering a warning did the North-West adviser see fit to criticize the employer<sup>99</sup>. As for the employees, his constituents, this union official held "no brief for men who persistently lost time", and considered that the "full penalty" under the Act would be appropriate in the event of any repetition of bad timekeeping.

<sup>96</sup> Glasgow Herald, November 11, 1916, concerning cases in Dumbarton Sheriff Court (shipyard worker fined £25 or 60 days) and Govan Police Court (Beardmore employee imprisoned for 30 days; another employee fined £5 or 30 days). The "double standard" was demonstrated by the failure to convict the Leith shipbuilding firm of John Cran & Co., charged at the High Court in Edinburgh, with defrauding the Admiralty of nearly £3000. A verdict of "not guilty" of falsifying their accounts, by falsely declaring the number of labour hours spent on Admiralty contracts was returned. As John Hill, general secretary of the Boilermakers' Society, observed, "There was a case of very bad time-keeping which ought to have rather more publicity, as this case does not seem to have been pressed upon the notice of newspapers in the way we have complained of." The clear lesson was that, "It is always a more difficult thing to convict money and influence than labour and ignorance". See USB, Monthly Report, May 1916, pp 11-12, 30. For Hill's outraged reaction to Cammell Laird's exploitation of the tribunal prosecutions in October 1915 in order to generate a moral panic against bad timekeepers (which resulted in one newspaper headline asking "Shall we Shoot Slackers"?), see ibid., October 1915, pp 10-11.

<sup>97</sup> Glasgow Herald, November 11, 1916.

<sup>98</sup> SSA, Quarterly Report, July - September 1915, p 17.

<sup>99</sup> Ibid., p 18. Cf., ibid., January - March 1916, p 19.

Within the Glasgow munitions tribunal, it was not uncommon for officials to express regret at the bad timekeeping of those members whom they were engaged in defending. Thus one official "deprecated" his members' poor record at one ministry prosecution hearing<sup>100</sup>. On another occasion, William Mackie of the Boilermakers, promised the tribunal that he would, that very night, hold a meeting at the Works gate to press on his members the "gravity" of their conduct<sup>101</sup>. That such an attitude was often consciously designed to influence the tribunal in imposing a lenient penalty does not detract from the genuine commitment of such officials to assist employers in altering work discipline. The preference was, however, to achieve that aim without the necessity for a prosecution. Even Sheriff Fyfe recognized this point. For when one official informed him that the union itself had machinery "which dealt in bad timekeeping", the sheriff welcomed the news<sup>102</sup>. Thus he,

"... expressed gratification to hear this and remarked that it was more effective for a man to be fined by his own union than by that tribunal. It brought home to him that the general sense of the community, including trade societies, was against all slacking of work. The union was to be commended for trying to help in the promotion of regular work."<sup>103</sup>

As Panitch has recently written<sup>104</sup>,

"Corporatism must be seen as a system of state-structured class collaboration. As such, its extension poses not an opportunity, but a danger to working-class organizations. Based on communitarian premises and collaborative practices

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<sup>100</sup>Glasgow Herald, October 29, 1915.

<sup>101</sup>Ibid., December 15, 1916.

<sup>102</sup>Ibid., September 14, 1916.

<sup>103</sup>Ibid.

<sup>104</sup>Leo Panitch, "Trade Unions and the Capitalist State", New Left Review, No. 125, 1981, pp 21-43, at p 42.



which articulate the interests of capital with the state, corporatist structures require of trade unions, as their contribution to the operation, not that they cut their ties with their base, but rather that they use those ties to legitimate state policy and elaborate their control over their members."<sup>105</sup>

Trade unions thereby imbibe the criteria of growth associated with capital and vigorously seek to disseminate these values among their membership, receiving from government in exchange social welfare commitments and, possibly, promises in respect to capital tax levies.

"This", says Panitch<sup>106</sup>, is the corporatist field of class collaboration, and in such situations, corporatist structures operate more effectively as a hegemonic apparatus than do parliaments, precisely because representation/mediation under corporatism is class-specific rather than universalistic."

Thus the collective mass organization of the working class lends its moral support to official campaigns to impose factory discipline on the working class, thereby shortening the odds against success. But it is submitted that the reason why trade unions should, in the first place, wish to lock themselves in a firm embrace with a policy which undermined their defensive function was not solely due to the "pragmatic acceptance of the existing order"<sup>107</sup> but to the operation of "hegemony" at an even deeper level than depicted by Panitch. For the ideology implicit in notions such as "good timekeeping" was surely internalized by trade unions long before the ideological appeal of the wartime national interest was broadcast; and the fact that trade unions remained active in what Panitch calls "the field of industrial class struggle", although

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<sup>105</sup>Italics in original.

<sup>106</sup>Panitch, op.cit. Italics in original.

<sup>107</sup>Michael Mann, "The Social Cohesion of Liberal Democracy", American Sociological Review, Vol. 35, 1970, pp 423-30, cited in Allen, op.cit., p 87.

distorted by the exigencies of wartime dilution, does not derogate from this essential collaboration.

#### The Limits of Voluntarism

Of course, from a more radical vantage point, the suggestion arose of conferring total jurisdiction in such matters on trade union district committees, as an exercise both in voluntarism and in decentralization.

Thus the Boilermakers' Belfast district committee reported that they<sup>108</sup>,

"... have been supplied periodically with the names of habitually bad timekeepers, and they decided - not from choice but in the interests of the local members and the Society generally - to deal with those men who wilfully neglect their work. Apart from the employers' complaints, which we could not ignore, the principal reason why the committee decided to deal with these men was to prevent them from being taken to another place, the Munitions Court, where the fines and punishment inflicted are fixed to meet the crime. None of our members have troubled the Munitions Court up to date. They prefer to be dealt with by their fellow members; and while some may doubt it, it is quite evident that a noticeable improvement in the timekeeping has taken place."

Similarly, James Ratcliffe, the ASE's Newcastle delegate, reported that<sup>109</sup>,

"We receive from time to time complaints of serious bad timekeeping, mostly from small firms, who are pressed for men and who dislike appealing to munitions

<sup>108</sup> USB, Monthly Report, November 1915, pp 59-60. The following year, the union's general secretary, John Hill, told his constituents that "In talks with various members of the Government on the question, many practical suggestions have been offered by the society for the improvement of the evil of lost time, and there is an agreement to cooperate in joint efforts in that direction. Everything in the power of the officials will be done to assure members of a day's work and a day's wages everyday, and having done that, they will also deal with those who, in spite of these provisions, deliberately and habitually lose time every week". See Glasgow Herald, July 15, 1916.

<sup>109</sup> ASE, Monthly Journal and Report, July 1916, p 24.



tribunals. It is somewhat difficult how to deal - apart from the courts - with habitually bad timekeepers. Publishing their names in the "Monthly" may perhaps have some deterrent effect. Better still, however, would it be if they could be taken in hand by members whose influence as shopmates would be no doubt the best appreciated."

Here the dull compulsion of penal sanctions was no doubt crucial, but so too, surely, was the ready acceptance of the ideology of patriotism and of steadiness at work, whether that ideology derived originally from the "dominant" classes or whether it was, indeed, rooted in the historically specific values of the working class.

We need hardly be surprised that the views of the above union officials were not confined to that social milieu. Even prominent employers recognized the "salutary" effect which workshop committees composed of the men themselves might exert on the supposedly undisciplined few. Indeed, in the midst of the notorious Cammell Laird prosecutions in October 1915, the company's manager suggested that the men appoint a small workshop committee, "to influence their mates ... to do their utmost both for their country and for their union"<sup>110</sup>.

Furthermore, during the passage of the Munitions Bill in June 1915, a proposal along similar lines had in fact been put forward by Henry Duke (later the High Court judge, Lord Merrivale) who considered that the original suggestion for a "dignified" tribunal might be inappropriate. He argued that<sup>111</sup>,

"... a tribunal that carries weight throughout the country does not inevitably carry weight in a particular factory. If you are going to dock the wages of a particular factory, in a case where it is possible he will not be standing alone and where it

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<sup>110</sup>Bev. IV, 37, f 283.

<sup>111</sup>H.C. Deb., 5th Series, Vol. 72, col. 1523, June 28, 1915.

is possible there will be little topics of controversy ... would it not be very much better if you repaid the confidence which organized labour has put in the Government and Parliament by enabling the men who are concerned in the class of cases to which reference has been made to themselves nominate a tribunal to deal with matters of this kind?"

Arthur Henderson, for the government, announced that the suggestion would be followed "as far as possible"<sup>112</sup>, made the cosmetic change of dividing the proposed tribunal into local and general tribunals, but essentially left matters very much as they were; that is, with a tripartite judicial body dominated by the "neutral" lawyer-chairman and entrusted with the enforcement of state discipline.

The above suggestions for workers' control of disciplinary questions were stillborn. But it is important to recognize how far removed from revolutionary principles were such proposals. For, far from heralding a transformation in the ownership and control of industry, they would, if implemented, have merely enlisted the unions as the policemen of industrial capital. Instead of defending their members against the encroachment of employers, district committees would have found themselves preoccupied with punishing their members for breach of those Ordering of Work rules which they themselves had no part in framing, apart from NAC scrutiny of the details (though not of the principle). This, of course, was what, in the final analysis, the essentially antinomian theory of corporatism ought to prescribe; that is, self-regulation in accordance with those precepts bureaucratically determined to be in the national interest. Indeed, if the government's half-hearted effort to remove trade unionists' suspicions over the Munitions Act, to conscript all wealth and resources, to stamp out profiteering and to introduce

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<sup>112</sup>OHMM, Vol. I, Part IV, p 48.



rationing, had been more effective and more seriously undertaken, the battle of ideas to convert all classes to the voluntary attainment of corporatist goals - a battle already rooted in the fertile soil of patriotism - might have been waged more successfully.

As it was, the occasional pressures for reform eschewed rejection of the principle of disciplinary rules. Proposals were, rather, in the direction of decentralized, joint voluntarist regulation in respect to the enforcement of discipline or towards mutuality in the framing of the works rules to be enforced by the munitions tribunals. For example, the Glasgow Trades Council demanded that all disciplinary powers then currently exercised by the tribunals should be transferred to local joint committees in all munitions areas<sup>113</sup>. The object of the reforms was stated to include<sup>114</sup>,

"... (2) to guarantee fair treatment to the worker ...  
(5) to decentralise the control of the production of munitions; and (6) to give to the Trade Unions responsibility and a share in management."

Compared to syndicalist programmes, these of course were modest demands. Indeed, the pursuit of "fairness" in industrial relations is, as Hyman and Brough have noted<sup>115</sup>, the pursuit of a conservative aim which accepts, as given, the status quo.

The demand for mutuality in the framing of rules was made by the ASE in its proposed amendments to the 1915 Act. Thus, it insisted<sup>116</sup>,

<sup>113</sup> See the four page pamphlet on proposed amendments to the 1915 Act issued by the trades council in November 1915. See also Glasgow Herald, November 18, 1915.

<sup>114</sup> Ibid.

<sup>115</sup> R. Hyman and I. Brough, Social Values and Industrial Relations (Oxford: Blackwell, 1975).

<sup>116</sup> ASE, Amending the Munitions of War Act 1915, (1916) p 19; cf., ASE, Monthly Journal and Report, December 1915, pp 26-7.

"No workshop rules to be enforced other than those definitely agreed to by the workmen concerned or those identical with the model rules issued by the Ministry of Munitions."

But these proposals simply meant that enforcement of rules, either mutually agreed but approved by the ministry, or framed by the ministry itself, was to remain at the whim of the foreman or under-manager. Thus, with one minor exception in respect to weekend working, the reissued model rules of February 1916 were identical to those of August 1915. Since these latter had themselves generated intense trade union hostility and had contained provisions potentially damaging to certain working class interests, such as the insistence on the lifting of restrictive practices, on regularity and diligence at work, on the working of "reasonable" overtime and on unquestioning obedience to "lawful" orders, the dragooning nature of such provisions was not merely reinforced. It also received further legitimation through the cosmetic amendment which trade union pressure had apparently caused to be enacted.

There was, of course, absolutely no prospect of mutuality in such matters, just as Lloyd George had rejected the CWC's demand to implement their own radical dilution policy with the riposte that<sup>117</sup>, "It would be a revolution, and you cannot carry through a revolution in the midst of the war". As one senior ministry official wrote at the time<sup>118</sup>,

"... the demand for 'reciprocity' is wrong in principle. In peace times equality of treatment for employers and workpeople on the part of the State is important. In war times it is irrelevant, because the only important object of the State is to win the war. ... In war times the State is the substantial employer of everybody in

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<sup>117</sup>Cited in Hinton, op.cit., p 135.

<sup>118</sup>MUN5/20/221.1/40, op.cit. The context, in fact, was the leaving certificate scheme. The principle, however, is applicable elsewhere.



the country and the nominal "employer" is simply one of the State's agents for producing munitions ... if we try to administer the production of munitions on the lines of 'reciprocity', we shall simply end by giving employers so little sense of responsibility for what they do that they will let their production of munitions drop. We must not do anything to weaken the employers' ordinary method of discipline in his establishment or his power of choosing and selecting his workmen or dismissing those whom he does not want."

The keynotes of corporatism were bureaucratic centralism in policy-making and rigidly imposed local discipline in support of that policy by employers and by trade unions, the latter now fulfilling a more circumscribed role; as much an "agent" of the state as the employer. Thus corporatist rules could not themselves be other than undemocratic, coercive and dictatorial even when their enforcement in the tribunals was, after October 1917, solely in the hands of the ministry. Mutuality could, indeed, exist in those firms which (as we shall see) refused to prosecute under the Ordering of Works rules, but only insofar as the state permitted this.

In any case, as we have noted, the demand was for a spurious mutuality whose effect was to involve working class institutions more securely in the application of a departmental labour policy whose assumptions were grounded in a hierarchical and authoritarian image of society. Mutuality over discipline did not connote democracy in the workplace. For the wider questions of planning, technological innovation, investment and so on would remain wholly untouched by such developments; indeed managerial authority could only be enhanced by such an attempt to harness union support for an essentially managerial function. It was not for nothing that Humbert Wolfe considered that joint shop committees to deal with bad timekeeping had produced "excellent results". For,

it was argued<sup>119</sup>,

"A prosecution following upon the warning of a Committee consisting as to half of workpeople, could not provide a grievance."

Thus unions might constitute an integral feature of management's or the state's disciplinary system, even if they might succeed in disguising the reality by pointing to their role in influencing the outcomes of hearings<sup>120</sup>. This participation is not a refutation of the ministry's argument against reciprocity, for the concept of a hierarchically determined disciplinary system, together with the coercive assumptions which inevitably underlie such systems, was preserved. Thus in pursuit of "social control" of the workforce, wartime employers and the state could develop schemes of industrial welfare which had, as one of their characteristic features, the determination to exclude trade unions<sup>121</sup>. Alternatively, they could foster or support schemes of industrial discipline which sought to include the trade unions.

Even where employers sought to eschew the munitions tribunals, on the grounds that they were a "nuisance", or time-consuming, or ineffective, or that they generated further controversy, the pragmatic objective of furthering munitions output remained the most prominent feature of experiments in joint control of discipline - or, to be more exact, in joint responsibility for the infliction of penalties on those who broke provisions which usually mirrored the ministry's authoritarian rules. Thus the Whitehead Torpedo Works, in proposing a joint disciplinary committee to its employees (and not, perhaps significantly, vice-versa) declared that<sup>122</sup>,

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<sup>119</sup>Wolfe, op.cit., p 178.

<sup>120</sup>Cf., Dept.of Employment, op.cit., p 37 for modern schemes of participation.

<sup>121</sup>Cf., Noelle Whiteside, "Industrial Welfare and Labour Regulation in Britain at the Time of the First World War", International Review of Social History, Vol. 25, 1980, pp 307-31, at p 309.

<sup>122</sup>Carter L. Goodrich, The Frontier of Control (London: Bell, 1920) p 147.



"There is a class of rules, offences against which are punishable by a fine of half a crown, dismissal, or a prosecution under the Munitions Act. None of these penalties is a convenient one. Fines are as much disliked by the firm as by the men; dismissal entails the loss of services which may be badly needed; and prosecutions entail great waste of time and may produce more evils than the original ones they are meant to cure."

No doubt many shop committees refused to sit in judgment of their fellows but others presumably reasoned that joint management-union "justice", if not "popular" justice, was at least preferable to a state prosecution<sup>123</sup>. Yet it is significant that joint decision-making in respect to disciplinary hearings, as distinct from consultation, was confined to that narrow sphere within the total spectrum of relations between employers and unions where the managerial right to impose discipline was "taken for granted". Whether culturally attuned to the indispensability of discipline in industry<sup>124</sup> or perhaps beguiled by the linguistic seduction of "good" order or "good" timekeeping, trade unionists, though they might experience the contradiction of role reversal in punishing their fellow unionists on behalf of their employer, clearly did not, during the war, challenge the right of capital or of the state to impose such an authoritarian conception in the first place.

#### The Role of the Tribunal

Notwithstanding the variety of techniques adopted by employers, by the state and even by trade union district committees, there remained ultimately the prospect of a tribunal prosecution, as a method of tightening up workshop discipline. Thomas Biggart, the secretary of the Clyde

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<sup>123</sup>Ibid., p 148.

<sup>124</sup>E.P. Thompson, "Time, Work-Discipline and Industrial Capitalism", Past and Present, No. 38, 1967, pp 56-97, esp. Parts VI - VIII.

engineers and shipbuilders, reported favourably to the Ministry of Munitions in December 1915 on the effects of recent prosecutions.

"With the exception of the 'incorrigibles'", he wrote<sup>125</sup>, "upon whom prosecution seems to have had little remedial effect, it would appear, on the whole, the recent prosecutions have had a very steadying effect not only with respect to the men actually in fault but with respect to the shops generally. A very gratifying feature of these prosecutions is that, when they are undertaken at the instance of the Ministry, the men complained against seem to appreciate much more seriously the gravity of their fault. It is unfortunate that in some cases a heavier fine has not been inflicted by the Courts since, when men are making such good wages, a small fine is as a rule easily paid. At the same time, firms report numerous instances where the men have been thoroughly ashamed of their conduct."

Yet though the ministry historians appeared to endorse this verdict, they nonetheless reported considerable criticism of the effectiveness of prosecutions in enforcing workshop discipline in the second year of the legislation, pointing, in fact, to those negative features which Biggart had identified, viz: the 'incorrigibles' and the insufficiency of the penalties imposed. On the other hand, this belief is difficult to reconcile with the questionnaire findings of the ministry referred to earlier, which painted a highly optimistic picture of timekeeping in the factories. Indeed, in a later survey conducted in October 1917, it was found that of 351 employers expressing a general opinion on timekeeping, only nine were critical<sup>126</sup>. Beardmore, for example, commented that<sup>127</sup>,

"The general question of bad timekeeping is more or less kept within reasonable bounds by means of the local tribunal, the number of cases being dealt with showing a marked decrease ... when fines are imposed on individuals we have found them frequently to have a deterrent effect on the other workers."

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<sup>125</sup>Bev. II, 8, ff 126-7; OHMM, Vol. IV, Part II, p 34.

<sup>126</sup>MUN5/91/345/3, "Report on Timekeeping in Controlled Establishments in October 1917", (n.d.).

<sup>127</sup>Ibid.



It is probable that the ministry historians were addressing themselves only to the statistics of prosecutions and to the observations of frequently sanctimonious tribunal clerks and chairmen, whose experiences and expectations no doubt differed from those employers at the sharper end of the struggle to improve factory discipline. The law, after all, magnifies conflicts and presents exaggerated pictures of social relations. It cannot therefore always be relied upon as an accurate index of normative conduct on the shop floor, even where the tribunal personnel faced a never-ending stream of bad timekeeping cases in their courts. Thus in January 1917, fines were imposed in 1744 out of 2681 timekeeping cases, with the amounts varying, according to the Official History, from an average of 6/10<sup>1</sup>/<sub>2</sub>d in Bradford, to the somewhat improbable figure of £3 at Huddersfield<sup>128</sup>; £3 being, of course, the statutory maximum. The low fines recorded from the Birmingham tribunal, where Professor Frank Tillyard was chairman, attracted attention. It was, however, observed that a disproportionate number of women and young persons appeared before that tribunal, suggesting, as we will note in chapter ten, a different approach to legal discipline from that in the case of adult males. The two latter tribunals were, nonetheless, the scenes of disorder usually associated with Glasgow. As E.S. Turner has recently written<sup>129</sup>,

"At Birmingham in February 1917, 235 navvies were summoned for being absent from work on December 28, 1916. When the tribunal convened they cheered, jeered, kept their caps on, smoked and passed round bottles of beer. Police intervened only to prevent two of them fighting. A Navvies' Union official who appealed for

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<sup>128</sup>OHMM, Vol. V, Part III, p 143.

<sup>129</sup>E.S. Turner, Dear Old Blighty (London: Michael Joseph, 1980) pp 156-7

quiet was told to shut up. Fines ranged from 10/- downwards ... At Huddersfield 280 munition workers, mostly apprentices, who had failed to work over Whitsun, marched on the tribunal singing and blowing bugles; their fines ranged from 25/- to 1/-."

Of course, wherever mass prosecutions were undertaken, there was always the threat that those accused, emboldened by solidarity, would seek to transform the proceedings into a carnival or political protest. The strategy of depoliticizing conflict by attaching legal labels to proscribed behaviour would frequently come unstuck when a collective prosecution manifestly contradicted the tendency of the law to individualize conflict. This is what appears to have happened in the above cases where the contrast between these prosecutions and the thousands of tedious and routine prosecutions of individual offenders was thrown into sharp relief. Indeed in January 1917, the Birmingham tribunal heard 383 timekeeping cases that month<sup>130</sup>; so that the sudden appearance of 235 individuals at one hearing would have altered perceptions dramatically.

In the light of the vast case load - the total monthly average for the six months from January to June 1917 was 2122 timekeeping cases<sup>131</sup> - the questions which might be raised in an analysis of such hearings are: to what extent, if at all, did the tribunals place constraints on the exercise of managerial discretion? If so, were corporatist sentiments influential factors or were constraints sought in order to "prevent injustice to either side", as the ministry historian, Miss C.V. Butler,

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<sup>130</sup> OHMM, Vol. V, Part III, p 143. In the same month, Sheffield, considered by employers to be a "most effective" tribunal, heard 502 cases; Metropolitan, 297; Glasgow, 207; and Coventry, 197. See ibid.

<sup>131</sup> Ibid.



suggested?<sup>132</sup> That is, did the tribunals actively stress a concept of pluralist fairness in their adjudications? Alternatively, did they tend to adopt or assume a managerial framework for analysis? If so, to what extent was this to buttress managerial authority, per se, or only that authority deemed consistent with the national interest? The answer, scarcely surprisingly, is that there were few constraints imposed by the tribunals on employers. Moreover, wherever rare criticism was directed against employers by tribunal chairmen, the object was not to "prevent injustice" to the employee, but simply to preserve the corporatist goal of outward unity and inward authoritarianism, with the management of the war economy continuing uninterrupted and domestic management's authority scarcely scratched. Thus the overall contribution of the munitions tribunal in enforcing the Ordering of Work rules was to reinforce managerial authority, whilst emphasising the public nature of the offence, thereby hoping to enlist the support of both unions and offenders themselves in the national enterprise.

#### Individual Prosecutions

The pattern of cases shows that bad timekeeping represented by far the most numerous offence tried by the local tribunals. Other cases concerning refusal to work reasonable amounts of overtime, absence from work without permission (often linked to visits to the pub) and gambling were also fairly common<sup>133</sup>. Thus if the authorities were intent upon the intensification of work discipline, then this entailed an assault on those forms of "misconduct" which undermined regularity of work. The

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<sup>132</sup> MUN5/353/349/1, op.cit. Christina Violet Butler (1884-1982), tutor of the Society of Oxford Home Students 1914-45; university lecturer in political organization, 1928-31; member of trade boards, 1920-38; published Social Conditions in Oxford (1912); Domestic Service: An Enquiry by the Women's Industrial Council (1916; reissued, 1980); See The Times, May 26, 1982, where her obituary omits mention of her work for the Ministry of Munitions.

<sup>133</sup> See MUN5/353/349/1, op.cit.; testimony of the Liverpool tribunal chairman, C.W. Surridge.

tribunals could only achieve so much by imposing maximum fines of £3 and by delivering regular sermons and fierce denunciations,<sup>134</sup> though, as we have seen, some firms were impressed by their industry and effectiveness. Yet the more prosecutions for bad timekeeping which took place, and the more colourful were the excuses offered, the more it became clear to the Ministry of Munitions that not all explanations for loss of time advanced by offenders at the tribunals could be discounted as special pleading. Thus the authorities could safely ignore the excuses of, for example, one worker employed by the engineering firm of A. & J. Main & Co. that his bad timekeeping was in response to the poor pay he had been receiving. Another worker, at Denny's shipyard in Dumbarton, having been denied a leaving certificate, deliberately kept bad time in the hope of being dismissed. One workman blamed paralysis which he had suffered some seven or eight years previously, while another unimaginative individual, caught climbing over the wall to get out of the shipyard, actually claimed he was suffering cramp at the time<sup>135</sup>. But it was frequently submitted that excessive overtime and overwork in general, illness and unhealthy working conditions had taken their toll. Thus ironworkers explained that their absence from work was due to ill health caused by being required to work in confined spaces aboard ship and therefore by being deprived of daylight. Another worker had worked "day and night since the war commenced", and on the day in question had stood for six hours working in water. Another two pleaded that four-mile walks to and from work sapped their strength. When there was

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<sup>134</sup>Cf., Glasgow Herald, February 9, 1916 for a typical lecture.

<sup>135</sup>For these cases, see ibid., November 18, October 5, 1915; September 27, October 27, 1916.



rain, they did not turn up, fully expecting to be turned away at the gate, since no work was usually performed in the wet. Another claimed excessive overtime had tired him out, to which Sheriff Fyfe replied<sup>136</sup>,

"... far too many men seemed to be under the impression that if they worked overtime, that excused them from turning out regularly at other times. That was not so."

Nonetheless, faced by arguments which might appear plausible, the ministry explored the causes of lost time on a firmer, scientific basis by establishing the Health of Munition Workers' Committee in September 1915<sup>137</sup> and by ascertaining from employers, through the surveys of controlled establishments, what their explanations for lost time were. The ministry survey of March 1916, referred to earlier<sup>138</sup>, revealed the following. First, 109 firms stated that due to the shortage of housing, their employees had far to travel to work "and implied, if not necessarily stated, that this was a cause" of lost time<sup>139</sup>. Beardmore's at Dalmuir certainly considered this to be an important factor<sup>140</sup>, and in fact funded large housing schemes on Clydeside to counter-act the shortage<sup>141</sup>,

<sup>136</sup>Ibid., July 22, 1916; ibid., January 15, 1917; ibid., October 26, 1916. Cf., a case involving 30 Paisley workers in ibid., February 13, 1917. See also Gosnell v Minister of Munitions, 1917, SMAR 22-3 September 4, 1916; Colley v Minister of Munitions, 1917, SMAR 21-2 September 4, 1916; LAB2/63/MT167/6, op.cit., on the adequacy of medical certificates. In all these cases fines or admonitions were imposed, the legitimacy of the proceedings thereby maintained.

<sup>137</sup>Whiteside, op.cit. passim; Wolfe, op.cit., pp 179-93; Hurwitz, State Intervention in Britain 1914-1919, op.cit., Ch. VI.

<sup>138</sup>Bev. V, 19, ff 139-42.

<sup>139</sup>Ibid.

<sup>140</sup>Ibid., V, 21, ff 140-1.

<sup>141</sup>Joseph Melling, "Employers, Industrial Housing and the Evolution of Company Welfare Policies in Britain's Heavy Industry: West Scotland, 1870-1920", International Review of Social History, Vol. 26, 1981, pp 255-301, at pp 285-7.

while Barclay Curle coupled as explanations the distance between home and work with the inadequacy of the tram and train service<sup>142</sup>. Bad weather was also cited by 63 firms as a cause of lost time and clearly affected those employees with long journeys to work. Illness was mentioned by 35 firms, one firm even stating that their employees were "run down". Twenty five companies cited overtime as a cause of lost time, without clarifying whether workers were thought to be too tired or too well paid to attend regularly. Eighteen referred to "moral defects" other than drink, that is, indifference and laziness, fifteen cited drink<sup>143</sup>, Thirteen mentioned high wages and only two attributed bad timekeeping to the desire on the part of a few young workers to obtain leaving certificates. The effect of air raids and shortage of materials were not included on the questionnaire. The latter could, of course, point to management incompetence, a common allegation made by trade unionists and officials in repudiating charges against munitions workers<sup>144</sup>. From this survey, it was clear that what were termed avoidable causes, for which blame attached to workers, were dwarfed in significance by the unavoidable causes such as bad weather and insufficient local housing. Thus as far as Glasgow was concerned, while there was a constant trickle of cases falling under the former category and which ended up at the tribunal, it is probably accurate to say that the authorities' "problem" was reduced to manageable proportions by the deterrent effect of a successful prosecution against those Glaswegians

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<sup>142</sup>Bev.V, 19, ff 139-42, op.cit.

<sup>143</sup>For drink, see below.

<sup>144</sup>See also Bev. V, 21, ff 144-52; Health of Munition Workers' Committee, Health of the Munition Workers (1917) p 42.



displaying the trait of independence (the phrase "free-born Englishman" will clearly not do here). It is true that timekeeping, nationally, appeared to worsen in the winter of 1917 when munitions workers were sometimes driven to join the food queues. However, the German spring offensive of 1918 appears to have motivated factory workers to respond patriotically by keeping good time. In the event, concluded the ministry, its drive to conquer lax timekeeping standards seemed to have been well rewarded<sup>145</sup>, though whether it was prepared to single out prosecutions as primarily responsible is highly questionable.

There were, indeed, other "problems" for the authorities in respect to discipline. For the campaign to get munitions workers into the factories and shipyards at the start of their shifts was only half the struggle. The next step was to ensure they remained there, during which time they were required to "work diligently", possibly more flexibly and, if necessary, to undertake a "reasonable amount of overtime". Thus the close surveillance of the men's activities resulted in a number of prosecutions for slacking, refusing orders, refusing overtime, and for other misdemeanours, of which rolling into work drunk was commonly alleged. Under the heading of slacking, for example, five shipyard workers were charged with failing to work diligently after they had all fallen asleep on the night shift. It was, however, recognised as an extenuating circumstance that they had just come straight from the day shift. But since a premium was customarily paid for night shift they were expected to perform the work. Obviously sensitive, nonetheless, to the need not

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<sup>145</sup>Bernard Waites, "The Effects of the First World War on the Economic and Social Structure of the English Working Class", Scottish Labour History Society Journal, No. 12, February 1978, pp 3-33, at p 17.

to discourage night shift working, neither the employer nor Sheriff Fyfe thought a fine was appropriate<sup>146</sup>.

The attempt to uphold more flexible working arrangements (which fell short of breaking down established demarcation lines) also resulted in the occasional prosecution. Thus riveters who refused to cooperate in making up broken squads from the pool of spare hands which the Clyde shipyards had instituted, were sternly warned by Sheriff Fyfe that "they were under a stricter discipline now than there had ever been hitherto in the yards"<sup>147</sup>. In only two hearings, however, was there any argument over the pace at which the work ought to have been performed. In the first case, which went to the Appeal Tribunal, David Hislop, a plater, was charged with taking  $50\frac{1}{2}$  hours to do work on a boiler for the Admiralty, while his work-mate, on a similar job, took just  $14\frac{3}{4}$  hours<sup>148</sup>. W.G. Sharp of the Boilermakers, who represented Hislop, claimed that he had been assisting other men in the shop at the time and had, in fact, taken no more than 36 hours for the job. But Sharp's principal objection was to the practice of the Ministry of Munitions, which undertook the prosecution, of proceeding solely on the employer's statement and without reference to any other party.

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"It was quite remarkable", he pointed out, "the celerity with which they took up cases from the employers, knowing nothing about the man's case till he was brought into Court."

<sup>146</sup>Glasgow Herald, August 9, 1916. Cf., ibid., October 27, 1916.

<sup>147</sup>Ibid., December 29, 1916. The men, of course, preferred to work with members of their own squad. For if newcomers did not possess ability equal to the original members, then the earnings of the squad would be diminished.

<sup>148</sup>Ibid., November 1, December 12, 1916.

<sup>149</sup>Ibid., December 12, 1916.



The attempt to brand a workman a malingerer was, he insisted, contrary to the "spirit" of the Munitions Act. Yet he failed to persuade the Appeal Tribunal judge, Lord Dewar, to over-rule the tribunal decision. Perhaps predictably so; for, if the local ministry officials had investigated the case as thoroughly as, on paper, they appeared to do in cases of bad timekeeping, then they would have been confident of having made out a strong case. For, as noted earlier, these Ordering of Work prosecutions were, for the most part, the last line in a long chain of procedures designed to rectify the perceived unsatisfactory behaviour of individual munitions workers. Acquittals were thus the rare exception, of which the following case, only the second in Glasgow alleging failure to work diligently, is one. It involved eight riveting squads who had been in dispute with their employer over the method of payment for riveting the casing of a barge<sup>150</sup>. They had been offered 13/6d per 100 rivets, the same rate as for a similar job the previous year. Not surprisingly in view of the rapid rise in the cost of living, they refused to undertake the work at that price, but agreed to accept a time rate of 11 $\frac{3}{4}$ d an hour. The company, however, were dissatisfied with the rate of progress of the work, spoke to the shop stewards and then reported the matter to the Ministry of Munitions. Despite these steps, the men persisted in working at the same pace. A new piece rate of £1:0/10d was then agreed, which seems to have spurred the men to further efforts. But the employer then complained to the tribunal that the riveters, prior to the new piece-work arrangement, had failed to work diligently. Whether the prosecution was vindictive or whether the

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<sup>150</sup>Ibid., March 7, 1917.

employer felt genuinely cheated by the men is unclear. What is certain is that the case fell flat as soon as it was admitted by the company's pay clerk that a number of the men in the squad had been off work through illness during the period when it was alleged they were slacking, while others had been employed in a different part of the yard. Total humiliation of the employer and of the ministry was only just avoided by the sheriff diplomatically suggesting that if the complaint were withdrawn, then he would assume that William Mackie, the Boilermakers' official,

"... would associate himself in pointing out that whether men are paid by time or by piece-work, it is their bounden duty at the present time to work with the utmost expedition."<sup>151</sup>

Perhaps government agreement to the proposal to prohibit employers from instituting Ordering of Work prosecutions after October 1917 derived as much from such embarrassing hearings as from the labour unrest which petty prosecutions engendered. If the only permissible prosecutor at the time of the above hearing had been the ministry, it is highly questionable whether it would have gone ahead.

Thus at the levels of intensifying the pace of work, of expanding the scope of managerial discretion and responsibility and of introducing more widespread and systematic overtime contrary to the wishes of the employees, the usefulness of the Ordering of Work regulations to Glasgow employers was manifestly limited. These were clearly not the instruments through which to impose an intensification of workshop controls by employers. The following possible reasons may be suggested. First, they were not structured specifically to this aim. Second, some of the above charges, especially in respect to working diligently, were difficult to

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<sup>151</sup>Ibid.



substantiate in court and could back-fire alarmingly against the employer, thus causing tremendous loss of face and discouraging renewed attempts at a legal solution. The challenge might not therefore be risked. Third, there were, of course, other priorities. Apart from dilution, most attention on the part of employers was directed to the reduction of bad timekeeping which, like turning up to work in a state of intoxication, was usually easy to verify in court. They were also practices on which a tripartite moral assault could be launched and which would, therefore, be less likely to provoke hostile reaction than attempts to intensify the pace of work. Energies were therefore concentrated on the "policing" dimension to the Ordering of Work regulations rather than to the "workshop control" (or "industrial relations") aspect. It was, in short, more likely to produce positive results for employers.

Misconduct, whether manifested through bad timekeeping, drunkenness, gambling, swearing, smoking, sleeping or fighting could be, and was, rationalized as an interference with the progress of munitions production for the war. But employee misconduct was also an attack on the authority of employers to demand total obedience within their establishments. The existence of the war emergency and the recognition of abnormal circumstances provided the best justification for such a counter-aggressive course of action which led to the tribunals. Displays of undisciplined behaviour by individuals were often seen as evidence for the lack of patriotism on the part of the perpetrators and would often be countered by moralizing sermons delivered by tribunal chairmen on the virtues of patriotism and on steadfastness at work. Such panegyrics would, as we have seen, invariably include round condemnation of the vices of slacking, of drink and of gambling; and would finally conclude with despairing regrets that the chairmen possessed no power to send such recalcitrants to the Front. Thus, unlike a number of the mass prosecutions for

Ordering of Work offences, such as at Cammell Laird, the object of virtually every individual prosecution was not to implement a change of domestic industrial relations policy under the umbrella of the Ordering of Work regulations. The object was, rather, to eliminate isolated disorder which was perceived both as a challenge to managerial authority and as evidence of moral delinquency.

#### Motives and Meanings

Yet, particularly in the case of the few instances of industrial sabotage, which we relate below, the explanations which surfaced in the courts were either those advanced by the authorities seeking to impose their definitions of the offenders' actions, conditioned by their own experiences and sense of values. Alternatively, they represented the excuses advanced by the perpetrators themselves, which did not necessarily represent their own genuine motives. They may simply have been explanations which they reckoned would influence the courts to treat them leniently. Thus to engage in industrial sabotage (or conceivably, in bad timekeeping, surreptitious visits to the pub during working hours and so on) might be directed to specific objectives such as the reduction of tension and frustration, the facilitation of the work process or even the assertion of some form of direct control<sup>152</sup>.

Taylor and Walton have recently offered a typology of motives and meanings attaching to industrial sabotage<sup>153</sup>. In their first category, individual or collective attempts to reduce tension and frustration do not aim to restructure social relationships in the factory. Incidents

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<sup>152</sup>These suggestions are taken from Laurie Taylor and Paul Walton, "Industrial Sabotage: Motives and Meanings", in Stan Cohen and Laurie Taylor (eds.) Images of Deviance (Harmondsworth: Penguin, 1971) pp 219-44.

<sup>153</sup>Ibid.



are minor interruptions and pose no challenge to managerial authority. The target, whether object or person, is relatively arbitrary and the act of sabotage is itself spontaneous and unplanned. Consider, then, the following example from a munitions factory in Glasgow in July 1916<sup>154</sup>. A young worker, Malcolm McLellan, was charged at Glasgow Sheriff Court with having maliciously damaged a machine by placing a cup between the pulley and driving belt of a thread milling machine. The result was that a shell which was being bored was damaged, workers in the vicinity, including the girl who owned the cup, were endangered by the threat posed by flying splinters, and munitions production was held up. Characteristically perhaps, the action was attributed to drink. In other words, it had to be construed as irrational, since "normal" people did not do such things. Moreover, the accused, said the procurator-fiscal, harboured no grudge against either the employer or against the girl, which might otherwise "explain" his deed. Thus the possibility that the action was a meaningful and calculated act to release the tension and frustration built up by working solidly in a shell factory was not even addressed though the assumed deviant quality of, for example, bad timekeeping was already under critical scrutiny by the HMWC which was recognising the physiological and ergonomic dimensions to employee "misconduct"<sup>155</sup>. Moreover, that the action might have been a deliberate act of sabotage directed against the girl was not considered. Yet on a number of occasions, men's hostility to women munitions workers had been expressed through wanton behaviour such as the wrong setting of tools by men or the hiding of the women's

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<sup>154</sup>Glasgow Herald, July 31, 1916.

<sup>155</sup>Sheriff Lee fined McLellan £3 or 14 days with the usual sermon advocating military-style retribution.

tools<sup>156</sup>. Perhaps the accused in this case graduated to more dangerous activity in his pursuit of his female prey.

In another case, a 22 year-old munitions worker, Robert Duncan, who had been transferred against his will from one machine to another, got rid of his frustration at this decision by damaging an electric planing machine<sup>157</sup>. At Govan Police Court, he was fined £10 or 60 days. Again, his action was, seemingly, irrational. In a state of anger to "take it out" on a machine seems a classical instance of "mindless violence". Yet a worker, powerless in such a situation, might have no other mode of expressing his feelings. For him, the action was not mindless or motiveless. For the authorities, however, it was gratuitous malice to which no rational meaning could be attached.

In Taylor and Walton's second type of sabotage, where the attempt is to facilitate or to ease the work process, those features commonly present include a more pronounced challenge to authority, a degree of planning, and a highly specific target, though again no restructuring of social relationships is intended. The case of John Stewart, a traffic labourer from Glasgow, is possibly illustrative<sup>158</sup>. He was charged at Paisley Sheriff Court before Sheriff Blair with having stopped mechanical haulage machinery in a shell filling factory, presumably the National Filling Factory at Georgetown. The ten-minute stoppage led, of course, to an interruption in munitions production for which Stewart was prosecuted. In defence, he claimed that he was not aware that he had done so.

<sup>156</sup> See, Irene Osgood Andrews and Margaret Hobbs, Economic Effects of the World War upon Women and Children in Great Britain (New York: OUP, 1921) p 90.

<sup>157</sup> Glasgow Herald, January 13, 1916.

<sup>158</sup> Ibid., October 5, 1918.



thus, like McLellan, attributing his action to irrationality, that is, the only ground on which it might be "acceptable" to the authorities. But as the prosecutor pointed out, there had been several complaints lately concerning persons stopping parts of the factory. This strongly pointed not to irrational behaviour, but to a course of conduct with specific, instrumental objectives. Most obviously, this pointed to the search for a respite from the tedious, continuous and highly dangerous work involved. Thus such action might be viewed as implying a challenge to foremen or supervisors through a conscious repudiation of the totality of mechanical control. Such an interpretation would, however, scarcely appeal to a "no-nonsense" sheriff who promptly fined Stewart £2 or 14 days<sup>159</sup>.

The third type of industrial sabotage identified by Taylor and Walton, involving the attempt to assert control, either temporarily or permanently, has, of course, been associated both with Luddite "collective bargaining by riot" and with the pursuit of wider political objectives, such as those associated with the "Wobblies"<sup>160</sup>. It is submitted, however, that, at least for Clydeside, there is not a great deal of evidence

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<sup>159</sup>In 1916, Sheriff Blair had been severely indicted not only by the members and officials, but also by the solicitors to the Associated Blacksmiths for his hostility to labour in an action for loss of wages. Following a strike of hammer-boys in October 1915, a number of smiths refused to work the hammer, for which their wages were docked. They sued to recover, and the case came before Sheriff Blair the following year. The union's solicitors reported that "... the Sheriff was biased against labour and there was little or no chance of him giving the case an impartial hearing. He constantly interrupted, putting questions ... showing his bias ...". As a result, the solicitors urged an appeal on the rare ground of the "malice and oppression" of the sheriff, explaining that, "... never in our experience have we seen such partiality [and] ... in the interests of labour generally the matter should not be allowed to rest where it is". See Tuckett, The Blacksmiths' Story, op.cit., pp 170-1.

<sup>160</sup>Taylor and Walton, op.cit., p 235.

for the conscious planning of sabotage towards either of these ends during the war, though employers did from time to time, make allegations, both trivial and weighty. Thus one local firm complained to the Ministry of Munitions that the,

"... personal antagonism of a few Trades Unionists /to dilution/ ... means that an unskilled man would lose his tools frequently, his coat would be drenched with water, his food oiled etc."<sup>161</sup>

Such treatment was accorded to non-unionists, as David Kirkwood confirms in his autobiography, though he would, of course, have disputed the claim that the opposition of a few trades unionists to dilution was the cause<sup>162</sup>.

More dramatically, the local engineering employers, during the deportation strikes in March 1916, had claimed that<sup>163</sup>,

"... the Clyde Workers' Committee had made arrangements for destructive measures, even for dynamiting the machinery."

Such alarmist reports were, no doubt, concocted deliberately to force the government's hand against those thought to be the strike leaders. In short, the radical tradition of sabotage was not renewed during the war.

In one respect, however, industrial sabotage might be redefined in such a way as to embrace actions which did not aim specifically at damaging goods or equipment. As William Mellor, writing in 1920, remarked<sup>164</sup>,

<sup>161</sup> Cited in McLean (1972), op.cit., p 6.

<sup>162</sup> David Kirkwood, My Life of Revolt, op.cit., pp 92-3.

<sup>163</sup> NWETE, Minute Book No. 7, March 23, 1916. Macassey had remarked that those who had struck over the arrests of Gallacher, Muir and Bell following the suppression of the Worker in January-February 1916 were "on strike in sympathy with men who advocated the policy of bombs and dynamite". This suggestion was, of course, ludicrous. See McLean (1983), op.cit., p 75.

<sup>164</sup> William Mellor, Direct Action (1920), cited in Geoff Brown, Sabotage (Nottingham: Spokesman Books, 1977) p xi.



"Sabotage means the clogging of the machine of capitalist industry by the use of certain forms of action, not necessarily violent and not necessarily destructive. It is commonly supposed to mean, purely and simply, the smashing of machinery, either by the direct breaking-up of or by rendering them useless by methods involving a deterioration of their value and efficiency. This idea of sabotage is very partial and unfair. The machinery of capitalism can be clogged quite effectively without the employment of that form of sabotage which expresses itself in destruction."

Thus Geoff Brown, whose quotation from Mellor we have shamelessly borrowed, identifies the maintenance of trade union restrictive practices, more especially, ca' canny, as a manifestation of industrial sabotage during the war<sup>165</sup>. Without prejudice to his argument, we would, ourselves, confine the "expanded" meaning of sabotage to include such incidents as where workers went AWOL and thereby disrupted production elsewhere in the works. This was particularly the case in process industries such as iron and steel. Thus, the necessity for fruitful teamwork when engaged on furnace work, for example, meant that the direct supervision characteristic of repetition work in, say, shell factories was inapplicable<sup>166</sup>. Yet while it might have been thought that the authorities would have dealt severely with every such case, perhaps even prosecuting in the Sheriff Court or Police Court where imprisonment could be ordered, the penalties imposed reflected the variations recorded under other jurisdictional heads of the Munitions Act. Perhaps the clearest instance of what might be called "constructive" industrial sabotage during the war involved John Eadie, a steel smelter employed by the Coltness

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<sup>165</sup>Brown, *ibid.*, ch.8.

<sup>166</sup>Cf., Eric Hopkins, "Working Conditions and Hours During the Industrial Revolution: A Re-appraisal", *Economic History Review*, Vol. 35 (N.S.), 1982, pp 52-66, at p 58.

Iron Company at Newmains in Ayrshire<sup>167</sup>. Having been placed in charge of a Siemens steel smelting furnace, he left the works without permission, with the result that the silica brick lining and roof of the furnace were melted. Damage was estimated at about £200 and the furnace put out of action for two to three weeks. He was fined the maximum £3 by the tribunal chairman, James Andrew. But as to his motivation, the fact that it was Christmas Day when his dereliction of duty occurred seems, astonishingly, to have received no mention as a factor, so far as the newspaper report of the case conveys an adequate account. One must presume that the chairmen refused to extend seasonal goodwill in the circumstances of the damage caused.

In another case, the intoxicated state of a barmill engine driver meant that he failed to notice overheating in the machinery which eventually led to the stopping of the mill for two shifts. Twenty employees were thrown idle and 100 tons of output were lost. A £2 fine was imposed. In other incidents, frequently, but not always, involving apprentices in steel works such as Stewart & Lloyds and the Scottish Tube Company, fines in the region of 5/-, 10/6d and £1 were imposed when their absence caused a dislocation of production<sup>169</sup>.

#### Drink

What many of these incidents pointed to was the difficulty of a few employers and of the Ministry of Munitions in eliminating the "problem"

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<sup>167</sup>Glasgow Herald, January 13, 1916.

<sup>168</sup>Ibid., March 10, 1916.

<sup>169</sup>Ibid., October 15, November 19, December 10, 1915. Another tactic which employers could adopt in such circumstances was to sue the offender in the Small Debt Court. It seems that such a step would only be practicable if the financial loss were nominal. For an example where the Scottish Iron and Steel Co. Ltd. sought to recover £9 damages from an employee who had gone AWOL, see Coatbridge Leader, January 15, 1916.



of drunkenness at work. It was, of course, convenient for employers, especially in the shipyards, to label their workers as pervasive and hardened drinkers whose vices impeded the output of munitions. The incompetence of employers in organizing the supply of materials or in arranging production schedules would be well hidden by a carefully orchestrated propaganda campaign which succeeded in deflecting attention from managerial faults. For example, the "evidence" supplied to the government as the basis for the notorious white paper of May 1915 included the assertion by Vickers that 80% of lost time was due to drink. They did, however, generously concede that 0.5% of the time lost was caused by faults on the part of management<sup>170</sup>. Yet the impact of drink on lost time was nothing like as dramatic as the lurid pictures painted by the employers and so avidly seized upon by the arch-opportunist, Lloyd George. Indeed, John Chartres of the Ministry of Munitions department of Intelligence and Record<sup>171</sup> reported candidly at the end of May 1915 that though special measures to counter complaints of lost time had been taken by the Glasgow Armaments Output Committee<sup>172</sup>, yet,

<sup>170</sup> John Turner, "State Purchase of the Liquor Trade in the First World War", Historical Journal, Vol. 23, 1980, pp 589-615, at p 599.

<sup>171</sup> On Chartres, see Rubin (1977b) op.cit., at p 224, note 11.

<sup>172</sup> Under the Glasgow AOC scheme, trade union members accused of bad timekeeping were to be reported to the union after consultations between the employer and shop stewards. The union would then investigate the case and assess and impose any fine. This would be deducted by the employer from the man's wage and handed to the union normally for disposal to a nominated charity. See Bev. I, 3, ff 253-60, "Third Report with four appendices on the operations of the Armaments Output Committee based on material received in the Intelligence Section down to May 20, 1915"; MUN5/91/345/106, "Outline of Scheme for the Improvement of Timekeeping in Controlled Establishments adopted by the Glasgow and West of Scotland AOC, May 14, 1915". The scheme apparently never got off the ground, the AOC being wound up after the enactment of the Munitions Act.

"... the documents in our possession do not enable me to say definitely whether or in what proportion the practice of losing time has been due to excessive indulgence in drink."<sup>173</sup>

Nonetheless, the introduction of liquor control orders on Clydeside coincided with the issue of the Ordering of Work regulations in August 1915, notwithstanding that the white paper, just three months earlier, had reported no noticeable increase in drinking in the area since the commencement of the war<sup>174</sup>. By December 1915, employers were reporting some evidence of better timekeeping, but that the breakthrough in the case of that proportion of workers who,

"... insist on having a daily supply of liquor and on occasion neglect their work as the result of over-indulgence",<sup>175</sup>

had not occurred. Indeed, the allegation went, timekeeping in some shipyards on the Clyde was "little better" than before the restrictions were imposed, with workers able to obtain as much drink as they desired, which could then still be taken into the yards and factories. The statistics of drunkenness compiled by the Glasgow police, while pointing to a reduction in the number of arrests since the introduction of the order, had to be measured against the reduction in police staffing, changing priorities and the fact that mere intoxication was insufficient to constitute an offence. The offender had, in addition, to be "incapable" before an arrest could be made. Yet in respect to employment, a state of drunkenness, per se, would result in loss of output at work. In this light, it was argued, the regulations were a failure. Indeed, it was

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<sup>173</sup>Bev. I, 3, ff 282-3, "Memorandum on the Drink Question by John Chartres, May 26, 1915".

<sup>174</sup>Marwick, The Deluge, op.cit., p 65.

<sup>175</sup>Glasgow Herald, December 9, 1915.



suggested<sup>176</sup>,

"... there is more drinking today in Glasgow than there was before any attempt to control the traffic",

and as a result munitions output still remained a casualty of the spree.

Similar claims were repeated on subsequent occasions throughout the war. At the Glasgow Liberal Club, one speaker insisted that<sup>177</sup>,

"They were told that timekeeping in public works had improved and that men did not so often come to their work in a condition which made them unfit to do it ... [Yet] they had failed to diminish drunkenness in the areas where whisky was the drink and that applied especially to the Clyde area."

At a Women's Patriotic Crusade meeting in St. Andrew's Hall (where Lloyd George had provided the Christmas "entertainment" for the shop stewards in 1915) the "economic waste and moral degradation caused by the drink traffic" was roundly condemned<sup>178</sup>. No doubt this was the kind of meeting of which the ASE Sheffield delegate had remarked, when he reported attending a conference on the liquor traffic,

"... which has for its object the further restrictions for munitions workers. We had lords there and Members of Parliament, all of whom know better than we do what is good for us, but they were told a thing or two that surprised them, and they would be wise if they left the men alone, as they have had just about enough of their lecturing and advice."<sup>179</sup>

The Clydeside employers got "into the act" once again in December 1916 when reminding the new Prime Minister that "the drinking customs of many of the workers are a serious handicap on production"<sup>180</sup>. Immediate

<sup>176</sup> Ibid.

<sup>177</sup> Ibid., March 16, 1916.

<sup>178</sup> Ibid., November 30, 1916.

<sup>179</sup> ASE, Monthly Journal and Report, November 1915, p 53.

<sup>180</sup> Glasgow Herald, December 18, 1916; Shipbuilder, Vol.16, January 1917, p 47.

total prohibition for the duration of the war was demanded, a proposal which had earlier been put to A.J. Balfour, First Lord of the Admiralty, at the employers' meeting with him in September 1916<sup>181</sup>. Reactions to the publication of the Clyde employers' communication to Lloyd George were predictably diverse on a subject which tested class, party and, indeed, religious loyalties in a way which other social and economic questions failed to do. Thus one correspondent, outraged at the employers' suggestion of total prohibition, indignantly enquired<sup>182</sup>,

"Do its ardent advocates never stop to consider the widows and children whose incomes, in part or in whole, are derived from brewery or distillery shares?"

The Clyde district Federation of Engineering and Shipbuilding Trades (FEST) was likewise angered, though obviously for different reasons. Predictably repudiating the slur thus cast on Clydeside labour, FEST presented a wide-ranging programme of war socialism as its response to,

"... those unsubtle tactics [which] are part of the "stock-in-trade" of the employers to cover up inefficient management and the unbusinesslike and appalling lack of systematized organization in their works."<sup>183</sup>

Thus the local FEST Committee, which included chairman, W.G. Sharp, Alex Richmond of the Sheet Metal Workers and William Mackie, Sharp's colleague in the Boilermakers' Society, demanded the annexation of profits from shipbuilding required for the war, state control of shipping, state purchase of the liquor trade and a "more systematic organization of the

<sup>181</sup> NWETEA, Minute Book No. 8, September 20, 1916. The proposal had two fall-back positions, prohibition of spirits only, failing which, prohibition of the carrying-out trade. The suggestion had been floated by Fred Henderson of D. & W. Henderson, shipbuilders, the president of the SEF in 1915. See ibid., September 18, 1916.

<sup>182</sup> Glasgow Herald, December 20, 1916.

<sup>183</sup> Ibid., December 21, 1916.



industry which can be attained by the workers having a share in the control and management through direct representation"<sup>184</sup>. It was a programme which reflected both the future political aspirations of the labour movement and the pitching of ambitious demands by organized trades unionism feeling their way in a process of wartime bargained corporatism.

However, nothing of immediate significance for the drink trade arose from the employers' campaign and from FEST's full-blooded riposte, though the episode was, perhaps, partly responsible for sending the Central Control Board (Liquor Traffic) scurrying to explore the possibility of state purchase in Glasgow in early 1917, an expedition which proved barren<sup>185</sup>.

But what of the facts, and not the rhetoric, pertaining to lost time through drink? The evidence is admittedly sketchy as Chartres' memorandum (supra) indicates. But this itself ought to be sufficient to discredit the Clyde employers' propaganda. What is clear is that of the nearly 300 firms which identified the causes of lost time in the ministry's questionnaire of March 1916 only 15 referred to drink, while another 15 reported that alcohol was less of a problem than in the past, a finding which nonetheless did not prevent one ministry official from ritually intoning that there was "no doubt that intemperance is responsible for a very considerable proportion of lost time"<sup>186</sup>. How such a

<sup>184</sup>Ibid.

<sup>185</sup>M.E. Rose, "The Success of Social Reform? The Central Control Board (Liquor Traffic) 1915-21", in M.R.D. Foot (ed.) War and Society (London: Paul Elek, 1973) Ch. 5, at p 81.

<sup>186</sup>Bev. V, 21, ff 144-52. Among Glasgow firms, David Bennie & Co. blamed drink for poor timekeeping, while MacFarlane, Strang & Co. praised the liquor restrictions for their good timekeeping. See MUN5/91/345/3, op.cit.

judgment could be reached by an educated senior civil servant frankly defies the imagination. But it certainly meshed with the prejudices of the employers at the time. Thus, once again a spurious campaign, a moral panic directed against a "folk devil", and capable of attracting popular support, in spite of the facts, was whipped up by the Clyde employers anxious to quell "the state of indiscipline which prevailed" in their yards and factories<sup>187</sup>. This, and not the opposition to dilution, represented the forces of darkness against which they struggled mightily. Yet if the imagery is metaphysical, the "problem" (as also in the case of bad timekeeping) was indeed epiphenomenal as the ministry's questionnaires confirm. No matter; the spectacle of tribunal prosecutions for drunkenness, though scarcely numerous, was such as to present to employers a stereotyped picture of the Clyde steel or shipyard worker whose fondness for strong drink was legendary.

What was this spectacle? It related to the practice in some establishments of men slipping out of the works for a drink, a practice connived at by companies in the past, when pub hours were generous by comparison with the new wartime regime. But with the advent of liquor restrictions and the moral crusade against drink, an opportunity presented itself to tighten up discipline and to replace an "indulgency pattern" on the part of management<sup>188</sup> towards slipping out for the traditional "wee hauf and a chaser", with a more rigorous style of supervision. Thus the boundaries of what constituted a disciplinary offence were them-

<sup>187</sup> NWETE, Minute Book No. 8, September 20, 1916.

<sup>188</sup> For this phrase, see Alvin Gouldner, Patterns of Industrial Bureaucracy (Glencoe, Ill: Free Press, 1954). The sequel to the tightening up of discipline following the introduction of cosmopolitan management to replace the local personnel is discussed in ibid., Wildcat Strike (London: Routledge & Kegan Paul, 1955).



selves widened. What had formerly been winked at, was now, in effect, criminalized.

Thus with pub opening hours in Glasgow and the West of Scotland confined to two short spells a day<sup>189</sup>, the practice of night shift workers nipping out for a drink between 6 and 9 p.m. became more noticeable. Numerous complaints were lodged by companies with the tribunals. For example, at a tribunal in Ayr the furnace keeper and his assistant at the Muirkirk Iron Works of William Baird & Co. were charged with slipping out for half-an-hour whilst waiting to turn out a cast, and then returning drunk<sup>190</sup>. The management explained that the prosecution was intended to stop the practice, rather than to punish the individuals involved<sup>191</sup>.

In a case against a puddler at the Phoenix Iron Works, owned by Stewart & Lloyds, Sheriff Fyfe even remarked that he<sup>192</sup>,

"supposed it was a custom to try and drink between 6 and 9 p.m. as much as would carry them through the night."

Though such intensive drinking no doubt led to a rapid diminution of self-control, apparent on the men's return to the works, the unions were reticent about defending their members in those circumstances where the employers were determined to stamp out the practice. However in one

<sup>189</sup> Ian Donnachie, "World War I and the Drink Question: State Control of the Drink Trade", Scottish Labour History Society Journal, No. 17, 1982, pp 19-26, at p 21.

<sup>190</sup> LAB2/63/MT167/6, J. Turner MacFarlane to Walter Payne, April 6, 1916. The case was stated to be of "considerable importance".

<sup>191</sup> Beardmore also prosecuted in similar circumstances specifically as a deterrent to others. See Glasgow Herald, September 23, 1915.

<sup>192</sup> Ibid., April 14, 1916. The idea of compressing drinking into as short a period as possible has, of course, been blamed as a principal contributory factor to the level of drunkenness in Scotland and explains the recent alteration of licensing hours to permit longer hours in Scottish pubs.

case, the ASE felt that Beardmore's crusading zeal had gone too far, where the company had both sacked the employee for slipping out to the pub for an hour, and had also prosecuted him under the Ordering of Work regulations. This, complained William Kerr at the tribunal, was a double punishment since, although the skilled employee in question could no doubt obtain alternative employment elsewhere, he might have been satisfied with his present employers. Kerr therefore argued that the prosecution was incompetent, but failed to persuade Sheriff Fyfe. For the chairman insisted that<sup>193</sup>,

"... it would be most unfortunate, and would be subversive of that very discipline which the Order was designed to strengthen",

if the Act required that the complainer be the workman's employer at the date the complaint was lodged, as well as at the date of the offence. Since a leaving certificate could not be endorsed with unfavourable comments, said the sheriff, there seemed no other method of effective punishment.

Whether the accused in the above case was typical of those appearing before the tribunal on a charge of intoxication or of keeping bad time is unclear. But what is remarkable is the number of occasions during which those charged with offences were spoken of by their employers in otherwise favourable terms. Thus the two furnace keepers at the Muirkirk Iron Works (supra) were described by their employer as "capable men" against whom the company had "no personal complaint"<sup>194</sup>.

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<sup>193</sup>Ibid., November 29, December 7, 1916. It is remarkable, but appropriate that the name of the accused in this drink prosecution was (with the aid of poetic licence) Johnnie Walker and that the Appeal Tribunal judge was, of course, Arthur Dewar. See ibid., February 10 1917; John S. Walker v William Beardmore & Co. Ltd., 1917, SMAR 63-4.

<sup>194</sup>LAB2/63/MT167/6, op.cit.



Similarly, a moulder and his helper charged with drunkenness were both said by the firm to be "good timekeepers", one of whom had since taken the pledge for at least a year<sup>195</sup>. In another case, Sheriff Fyfe asked "why it was that the men who took a dram too much were always the best workmen?"<sup>196</sup> Indeed, even when a worker was accused of quarrelling with and assaulting his foreman while under the influence of drink, Sheriff Fyfe was<sup>197</sup>,

"... inclined to be a little thankful that there was an excuse of the kind, as it is hard to believe that a young and respectable man like the respondent should have committed such an assault."

There is little doubt of the feeling of dejection on the part of Sheriff Fyfe when trying such cases as those where the characters of the accused were praised in spite of the prosecutions. On one occasion, he

<sup>195</sup> Glasgow Herald, May 10, 1916.

<sup>196</sup> Ibid., October 18, 1916. Cf., ibid., October 4, 1916 where it was remarked that it was "extraordinary" that the best men got drunk. Cf., letter in ibid., December 20, 1916.

<sup>197</sup> Ibid., January 16, 1917. The accused was Robert Davidson, an iron turner in a Lanarkshire steel works, who was also a professional footballer. He was fined the maximum £3 as the assault was "neither sporting nor British". For the prosecution of the more celebrated Celtic player, Patsy Gallagher, for having played football instead of working in a munitions factory, see Glasgow Herald, November 22, 1916. It was not unusual for professional footballers to end up at the tribunal as the rival pressures of munitions work and playing league football posed dilemmas for the players. As personalities in the public eye, they were expected to set an example as industrious munitions workers. They therefore tended to be treated unsympathetically by the tribunal. For the case of Horace Barnes, who played for Manchester City, see The Times, October 21, 1915. A residential street in Manchester has been named after Barnes. In another case, Fred Sowerby who played for St. Mirren was refused a leaving certificate, sought on medical grounds, when it was revealed that he had lost time through playing for the club. See Glasgow Herald, 1915 (exact reference temporarily mislaid).

ventilated his sense of exasperation against the employers who had prosecuted a number of men for taking a week's holiday in the summer.

"If you brought up weeds", he protested<sup>198</sup>, "we would know how to deal with them. But you seem to bring your best men here, putting them in the same position as the deliberate shirker."

It was no wonder that Fyfe and his fellow industrial unrest commissioners in 1917 recommended that henceforth only the Ministry of Munitions should initiate Ordering of Work prosecutions. It must, however, be pointed out that the impact of the tribunal as a deterrent was on the wane once the novelty had disappeared and war-weariness had become more pronounced. The pettiness of many of the cases heard by Sheriff Fyfe, even where the prosecutions were successful, no doubt also dampened the enthusiasm of the chairman to reiterate the moral lesson which he considered it incumbent on him to preach. The law of diminishing returns was thus as clearly applicable to the work of the tribunal as to other spheres of activity.

The role of the tribunal in moderating the severity of the rules and in ensuring, as the ministry historians saw it, "fairness" to both sides, can, however, be detected - if one looks closely enough - among the plethora of unremarkable and perfunctory hearings conducted in Glasgow. For example, in respect to a charge against four workers at Sir William Arrol & Co., civil engineers, of failing to work diligently, in that they had been discovered playing cards, the accused admitted to the card game but pointed out that, as piece-workers, they had been given no work to do. Cmdr. Gibson was severe in his criticism of the employer. Thus,

"The Court", he said,<sup>199</sup> "was satisfied that this case should never have been brought. It seemed quite clear from the evidence that the men were without work, and to him that was a very strange commentary on much that was brought to the Court."

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<sup>198</sup>Ibid., October 11, 1916.

<sup>199</sup>Ibid., February 18, 1916.



The conventional wisdom of an excess of work to be done and a critical shortage of manpower with which to perform it, was thus questioned by the outcome of this case. It was no wonder that Gibson's sensitive handling of tribunal hearings was viewed as dangerous iconoclasm by the Ministry of Munitions in London. He did not need to respond to the level of industrial unrest in order to reach such a decision. He simply applied the facts.

In another case, Sheriff Craigie granted compensation to a Beardmore worker at Dalmuir shipyard who had been dismissed following a conviction for betting outside the yard<sup>200</sup>. Even his reasoning betrayed an element of national stereotyping when he pointed out that it would be unlawful for an employer to dismiss an employee who was drunk every night after work but who turned up in the mornings in a sober state. Finally, when the same firm imposed fines of 2/6d on those photographed leaving the works before stopping time, the company were successfully sued in the Glasgow Small Debt Court by a caulker who established that he had been on a legitimate errand at the time<sup>201</sup>. Yet instead of lambasting the firm for its practice of imposing fines on innocent workers, Sheriff Lee, nonetheless, thought it more important to dwell on that "lamentable feature, this waste of work in shipyards". Thus where "fairness" was extended to munitions workers, it was of the most grudging nature. Contemporary myths about factory misconduct on a massive scale, carefully and insidiously revived by the employers from time to time, retained too potent a hold over the imagination of those - employers, and sheriffs - whose vision was restricted to the pathological

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<sup>200</sup> Ibid., October 19, 1917. That a policeman had warned the employee for gambling within the yard precincts some three years earlier was discounted by the judge as an irrelevancy.

<sup>201</sup> Ibid., December 21, 1916.

and not to the physiological occurrences.

### Conclusion

The enforcement of a statutorily prescribed system of factory discipline during the First World War was not a wholly negative experience for munitions workers. For it did offer trade union representatives an opportunity to extend their spheres of influence with management and the state, despite the danger of compromising their capacity to defend their own class interests. Yet during the war, these distinctive class interests had been relegated to the greater good, as even factory workers perceived it, of the nation at war. Notwithstanding, in this context, the weapon of prosecution by employers, as a means of maintaining order in the workshop, achieved only limited success. Principally aimed at bad timekeeping offences, it was directed mainly at symptoms rather than at causes, a finding which the Ministry of Munitions soon recognized. In the hands of employers, prosecutions were seen by workers as the exercise of a public power for private ends. Thus it was in the "national interest" - that corporatist concept which transcended the narrow domestic concerns of factory workers and employers - that prompted anxious ministry investigations into the social and economic causes of lost time, that drew the unions formally into the disciplinary process with its plurality of techniques of persuasion, and that ultimately vested the right of prosecution solely in the ministry itself. Petty and vindictive prosecutions by employers were indeed a feature of the earlier period of the wartime legal regime. In this respect, comparisons may be drawn with the pre-war experience of the implementation of harsh and punitive disciplinary laws, that is, with the "administrative control" postulated by Woodward or the "direct



control" conceptualised by Friedman<sup>202</sup>. Yet, as we have seen, a considerable more complex picture of the enforcement of factory discipline, containing a powerful ingredient which we may simply describe as "corporatist control" and which was not exclusively dependant on legal sanctions, emerged during the First World War.

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<sup>202</sup>Friedman, op.cit., note 3A, supra.

## CHAPTER NINE

The Leaving Certificate SchemeI: 1915-1916Introduction

A currently fashionable theme occupying the attentions of historians of crime and punishment is the relationship between law breaking and law enforcement. Among many questions, consideration has focussed on the factors which may help to determine how the law is mobilised in particular cases and how judicial discretion in deciding on guilt or in prescribing punishment is exercised.<sup>1</sup> For example, the existence of widespread dearth in a community may well have excused the perpetrators of various thefts from the worst excesses of the eighteenth century capital statutes,<sup>2</sup> and allowed judges to calibrate the level of punishment (or even the finding of guilt) with the level of privation suffered, or with whatever other factor, such as age or gender, which might be considered relevant.<sup>3</sup> In the present chapter, the background

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<sup>1</sup>Leading works include Douglas Hay et al., Albion's Fatal Tree (London: Allen Lane, 1975) and John Brewer and John Styles (eds.) An Ungovernable People (London: Hutchinson, 1980). For extensive bibliographical references, see Victor Bailey, "Crime, Criminal Justice and Authority in England", Bulletin of the Society for the Study of Labour History, No 40, Spring 1980, pp 36-46; David Sugarman, J.N.J. Palmer and G.R. Rubin, "Crime, Law and Authority in Nineteenth Century Britain", op.cit. pp 28-141; David Philips, "'A Just Measure of Crime, Authority, Hunters and Blue Locusts': The 'Revisionist' Social History of Crime and the Law in Britain, 1780-1850" in Stanley Cohen and Andrew Scull (eds.), Social Control and the State (Oxford: Martin Robertson, 1983) ch.3; Michael Ignatieff, "State, Civil Society and Total Institutions: A Critique of Recent Social Histories of Punishment", in ibid., ch.4.

<sup>2</sup>Cf., J.M. Beattie, "The Pattern of Crime in England, 1660-1800", Past & Present, No. 62, 1974, pp 47-95; ibid., "Crime and the Courts in Surrey 1736-1753" in J.S. Cockburn (ed.) Crime in England, 1500-1800 (London: Methuen, 1977) ch. 7; Douglas Hay, "War, Dearth and Theft in the Eighteenth Century", Past & Present, No. 95, 1982, pp 117-60.

<sup>3</sup>See over/...



climate of entrenched industrial conflict and trade union militancy in Glasgow is the given variable against which the exercise of local tribunal discretion in the enforcement of the leaving certificate scheme is to be measured. In other words, the working hypothesis is that there is a direct relationship between the level of local unrest and lawlessness on the one hand, and the exercise of judicial discretion on the other.<sup>4</sup> This in turn would be expected to lead to a pattern of decision-making in Glasgow different from that in other industrial regions where local militancy was not so prevalent or where it was not perceived by the tribunal as a constant threat to order and output. Thus one might initially speculate that the Glasgow tribunal, acutely conscious of the powder-keg atmosphere of hostility to the Munitions Act, which the Fairfield episodes sharply underlined, would adjudicate upon leaving certificate applications in a sympathetic, rather than in a provocative and aggressive, manner.

Indeed, the evidence from chapter six, which describes the removal of Gibson, Gloag and Andrew from their posts does appear to support the proposition that the tribunal responded to the level of local militancy by adopting a policy of sensitivity, perhaps even appeasement, to certificate appeals. For there is little doubt that employers were on occasion discomfited by their experience at the hands of the tribunal chairmen. Thus it is reasonable to suppose that the tribunal endeavoured

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<sup>3</sup>Cf., P.J.R. King "Decision-makers and Decision-making in the 18th Century Criminal Law", Historical Journal (forthcoming; 1984); ibid., "War, Judicial Discretion and the Problems of Young Adulthood 1740-1815" (unpublished; 1984); J.M. Beattie, "The Criminality of Women in Eighteenth Century England", Journal of Social History, Vol. 8, 1975, pp 80-116.

<sup>4</sup>Cf., Royden Harrison, referring to the broader theme linking "patterns of lawlessness and of law enforcement". See his "Foreword" to Victor Bailey (ed.) Policing and Punishment in Nineteenth Century Britain (London: Croom Helm, 1981).

to moderate the excesses of local employers who had sought to exploit their new-found power over their workmen.<sup>5</sup>

But notwithstanding the above points, it is clear that the tribunal's intervention struck hard only at the grosser abuses perpetrated by a number of local employers. Less blatant perversions might not reach the tribunal at all, or, if they did, might escape censure. Moreover, there exists a difficult methodological question. That is, did the detailed accounts of leaving certificate proceedings published in the Glasgow Herald present a representative picture of the overall pattern? For the fact remains that reporting standards varied enormously from one application to another. Reporters would be likely to give widest coverage to multiple leaving certificate applications, where a large group of workers from a single establishment submitted identical claims. These, needless to say, raised collective grievances of an "industrial relations" character, whereas individual applications were more likely (though not exclusively) to involve personal concerns, such as ill-health or the maintenance of two homes. The multiple applications, which we are confident were adequately reported in the press and have also been identified for the purposes of this research, would, in turn, probably entail the lengthiest and most fiercely contested claims in a day's hearing. Yet we may guess from the circumstances surrounding the removal of Gibson and his colleagues and from the unions' efforts at "collective bargaining by litigation" (infra, chapter five), that these multiple applications proportionately enjoyed a high success rate. If so (and we believe this to be the case), such outcomes might not necessarily be representative of the bulk of the leaving certificate hearings. By contrast, it is probably true to say that most

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<sup>5</sup>OHMM, Vol. IV, Part II, p.18, where it is stated that, "The department endeavoured to check these abuses [by employers] by correspondence, and the tribunals to remedy them by granting certificates..."



applications, if mentioned at all in the press, would be reported by reference to a bare decision, which might, or more commonly might not, add the merest detail of occupation or employer. Therefore to explore the aggregate picture, we will, later in the chapter, examine the statistical results from tribunal hearings in six major cities including Glasgow, over the period January 1916 to October 1917 with the object of determining the comparative success rate of leaving certificate applications among those localities (unfortunately no local breakdowns for the period to January 1916 have survived; only national aggregates exist for this period). Now if the Glasgow tribunal had sought to weigh its exercise of discretion against the level of local militancy, we would expect to find a significant disparity between Glasgow and relatively peaceable industrial regions in respect to the aggregate number of leaving certificates granted or refused. But in fact we will observe that the aggregate results simply do not bear out the proposition linking the pattern of decision-making with labour unrest. Indeed the Glasgow figures for January to April 1916, when the disgraced triumvirate were still presiding over hearings, bear a striking similarity in percentage terms, as we shall see, to the regime conducted by their successors, Fyfe and Craigie.

If, therefore, the aggregate returns cannot bear the weight of our initial hypothesis, it must nevertheless be remembered that at least in the cases of Gibson and Andrew, they chose to exercise their discretion whether to grant or to withhold certificates in an essentially contradictory and inconsistent manner. For while insisting on the primacy of the "national interest" as the determining factor in their adjudications, the tribunal chairmen were on occasion caught red-handed by the Ministry of Munitions, assessing by reference to ethical, rather than to narrower corporatist criteria, whether "the consent of an employer", in the words of the 1915 Act, "has been unreasonably withheld".

Therefore, by personifying the concept of judicial autonomy, they committed grave faux pas which, as seen in chapter six, were cruelly exposed in angry letters to the ministry from the likes of Askwith, Paterson, Bartellot and influential works managers among the local aristocracy of industrial capital.

Thus, despite the repudiation, at the broadest statistical level, of the link between judicial discretion and industrial discord, the theory, it might be objected, can in fact be qualifiedly rehabilitated. For if the unfortunate trio were sacked because of their leniency in closely monitored cases, then it may be argued that so far as the more crucial and consequential cases were concerned, the tribunal did indeed respond to an external stimulus; though as we also saw, labour unrest was perhaps less of a factor in the cases of Gibson and Andrew, where "humanitarianism" was more influential, than in the case of Gloag where militancy clearly did unnerve him.

In this respect, the apparently contradictory position in which the Glasgow tribunal chairmen found themselves, that is, floundering between the devil of labour and the deep blue sea of both capital and ministry becomes apparent. For on the one hand, the pattern of decision-making at the tribunal does not quite match the exaggerated and highly critical account suggested by the level of trade union condemnation (and suggested also, though perhaps implicitly, by the findings of the Balfour-Macassey Commission). For their track record fared no worse in statistical terms than that of Fyfe or Craigie, or of chairmen elsewhere. On the other hand, they did succeed in alienating both prominent local employers and the bureaucratic centralists at the Ministry of Munitions, for which indiscretions they paid dearly. Thus, the tribunal's sympathetic approach to individual claimants, where the (ministry's) national interest was not compromised, would have been acceptable to the Ministry of Munitions. Instead, the tribunal chairmen's propensity to speak their own minds



rather than that of the ministry, and their generally sympathetic treatment of multiple certificate applications during a period of acute local tension, shows the limited extent to which the theory linking discretion with unrest applied in Glasgow.

Yet, that unrest, or more specifically in this chapter, hostility to the leaving certificate scheme both in Glasgow and elsewhere, certainly existed and is analysed in the next section.

#### Hostility to the Scheme, 1915-1916

According to the Official History of the Ministry of Munitions, the leaving certificate scheme constituted,<sup>6</sup>

"... the most drastic restriction of normal liberties contained in the Act, and, while Section 7 has been described as the most powerful instrument of industrial efficiency which the War has produced, in practice it gave rise to discontent which could only be finally allayed by its repeal."

In order to achieve the declared objective of industrial efficiency, the scheme of clearance notes in the hands of employers was instituted,

"... as a means of checking the constant drifting of labour in the direction of higher wages - a tendency which not only interfered with regular work, but was likely to cause a general rise of wages. Cases occurred where men left skilled to go to unskilled work on higher wages; where men were drawn from permanent work of national value to temporary employment at higher rates; and where men were finally lost to some industries by drifting into temporary employment at the end of which they were taken for the Army."<sup>7</sup>

Thus, in the absence of direct wage regulation which sought to impose uniformity of rates and earnings, employers were vulnerable to the enhanced market power possessed by skilled labour, for whom "the instinct

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<sup>6</sup> OHMM, Vol. I, Part IV, p.3. Cf, Roger Davidson, "Sir Hubert Llewellyn Smith and Labour Policy 1886-1916", Cambridge Ph.D., 1971, p. 358.

<sup>7</sup> OHMM, Vol. I, Part IV, p. 38.

to sell in the dearest market was not restrained by the general belief that Capital was exploiting to the full the needs of the country".<sup>8</sup> With employers desperate to attract and complete munitions contracts, a widespread bidding up of wage rates and bonuses took place, resulting in a chaotic free-for-all to the detriment of the supply departments. To add to the employers' miseries, it was suggested that, since prior to the Act,

"... any competent engineer found no difficulty in getting work, he was ready on the least cause, or perhaps through mere restlessness, to throw up his job and go elsewhere. Thus, at a time when direction was above all things necessary, the movement of labour was in a peculiar degree at the mercy of caprice."<sup>9</sup>

This feature in fact hints at the third objective which the leaving certificate was designed to achieve. As Lloyd George explained in the Commons,<sup>10</sup>

"It is absolutely impossible to obtain any discipline or control over men, if a man who may be either slack or disobedient to a reasonable order is able to walk out at the moment, go to the works which are only five or ten minutes off, and be welcomed with open arms without any questions being asked. That must be stopped".

Thus the trinity of labour immobility, wage deflation and factory discipline was emblazoned on the leaving certificate, though it was the disciplinary effects of the scheme which made the biggest initial impact on labour, and indeed on government, opinion. In respect to mobility and wages, the inability of workers to change jobs at leisure or for personal advancement was of course a constant irritant throughout the period of the scheme's existence.<sup>11</sup> Yet though prices consistently outstripped wages in the first three years of the war,<sup>12</sup>

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<sup>8</sup>Ibid., Vol. IV, Part II, p.14.

<sup>9</sup>Ibid., p. 15.

<sup>10</sup>Ibid., Vol. I, Part IV, p. 40; ibid., Vol. V, Part I, p.34; H.C.Deb., 5th series, Vol. 72, col. 1199, June 23, 1915.

<sup>11</sup>Cf., Davidson (1971) op.cit., p.360.

<sup>12</sup> Bowley, op cit, passim



it was only when the grievances of time workers compared with those on payment-by-results systems exploded into open conflict in the first half of 1917 (as we shall see later) that the government decided with certain safeguards, to discard the leaving certificate scheme.<sup>13</sup>

Nonetheless, in the first few months of the scheme's existence, the Labour press regularly denounced section seven in all its manifestations. For example, by preventing workers from moving freely from one firm to another, it rendered them "little better than slaves", complained the Woman's Dreadnought.<sup>14</sup> The Cotton Factory Times<sup>15</sup> noted that employers were withholding certificates on the ground that they "never gave testimonials", the object being in some cases to "coerce men into working at scab rates". This accusation, of course, went beyond the government's policy of seeking to contain wage drift, and pointed to how employers might use the leaving certificate to maintain wage levels at less than the district rate. Indeed this was a grievance which still rankled right up to the period when the scheme was abolished (though a partial remedy to be inserted in the abortive private dilution measure of May 1917 had been prepared).<sup>16</sup>

But there were other serious grievances to which attention was drawn. The most obvious, pointed out by John Hodge for the Labour Party in the Commons debate on the Bill, was that while the worker could not leave his employment without a certificate, the employer was left free to dismiss him.<sup>17</sup> Moreover, there was nothing in the 1915

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<sup>13</sup> OHMM, Vol. VI, Part I, p.35.

<sup>14</sup> Woman's Dreadnought, August 7, 1915. Cf., ibid., September, 11, 18, 1915.

<sup>15</sup> Cotton Factory Times, September 10, 1915.

<sup>16</sup> OHMM, Vol. V, Part I, p.52.

<sup>17</sup> Ibid., Vol. I, Part IV, p. 41; HC Deb, 5th Series, Vol. 72, col. 1519, June 23, 1915.

Act to compel an employer to issue a certificate even if he dismissed an employee or suspended him for a lengthy period without pay.<sup>18</sup> Thus,

"One would naturally suppose that a man who had been dismissed, kicked out, sacked, had left so entirely with the consent of his employer, that, fined or unfined, he would, at any rate, be entitled to his "consent certificate".

But no! Neither under this Act, nor under any other, nor by common law, is the employer bound to give a certificate. He cannot be compelled to put into writing a statement of fact that he cannot deny.

So this is what happens: A man is dismissed; the employer refuses the certificate - "A bad workman! Let him rot!" - and for six weeks the man is unemployable, starving perhaps, degenerating certainly - and this at a time when every workman is needed, even the indifferent."<sup>19</sup>

Furthermore, where the tribunal did award a certificate, the employer incurred no penalty, no matter how unreasonable or vindictive his refusal had been, and even though the employee had undoubtedly suffered loss of wages during the period without a certificate.<sup>20</sup> Thus,

"The total effect", concluded the Official History, "was to arm employers, managers and foremen with arbitrary powers that were certain to be abused in unscrupulous hands."<sup>21</sup>

Indeed, criticism of employers was even endorsed by one of the ministry architects of the scheme, Humbert Wolfe, who later agreed that many employers and foremen had used the power conferred on them in an oppressive manner. Thus,

"They enforced changes in the methods of working, they penalized men by delay in issuing certificates, and they refused certificates to men thrown out of work by a strike or breakdown of machinery; they would not allow men who had come from a distance to return home, and they would not grant certificates to workmen leaving to take up better work elsewhere."<sup>22</sup>

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<sup>18</sup> Wolfe, Labour Supply and Regulation, op.cit., p.221; Forward, September 11, 25, 1915.

<sup>19</sup> Nation, October 9, 1915, p. 53.

<sup>20</sup> OHMM, Vol. I, Part IV, p. 41.

<sup>21</sup> Ibid., p. 42.

<sup>22</sup> Wolfe, op.cit., p. 223.



The local ministry official in Glasgow, James Paterson, had in fact warned his department heads of trouble afoot as early as August 4. Already, he pointed out, a number of skilled men were walking the streets unemployed because of their inability to satisfy prospective employers that their previous employers had consented to their leaving.

"It is only now", he wrote<sup>23</sup>, "that employers are beginning to understand the operation of Section 7(1), but even those who have thought of it appear to be considering only one part of its application, i.e. the right that it confers on them to retain their men in their employment and the fact that any other firm which engages the workman without a certificate is guilty of a contravention of the Act. I have not yet heard of an employer, large or small, who is adopting the practice of issuing certificates of consent under Section 7 (1)."

The Ministry of Munitions attempted to remedy the situation by distributing a circular to the engineering and shipbuilders' employers' federations which declared that,<sup>24</sup>

"The Minister regards it of great importance that when a certificate is refused, the workman should, if he so desires, be retained in the employer's service, and that certificates should never be withheld when a workman is dismissed."

Yet not only did suspensions or discharges without certificates continue unabated. Employers also attempted to convert their certificates into character notes, stating that the reason for dismissal was breach of discipline or poor timekeeping. This practice, though not widespread, effectively prevented the recipients of such certificates from obtaining alternative employment until the Fairfield shipwrights' case brought such matters to a head. Thereafter, new regulations stipulated that no endorsements to the standard form of certificate prescribed in the regulations were to be permitted, and scarcely any further trade union complaints on this score were recorded.<sup>25</sup>

<sup>23</sup>OHMM, Vol. IV, Part II, pp 17-18.

<sup>24</sup>Ibid., p. 18.

<sup>25</sup>For an isolated example of a prosecution of an employer for wrongly endorsing a certificate after the Fairfield shipwrights' episode, see ASE, Monthly Journal and Report, April 1916, p.55; The Times, March 14, 1916. The employer, a Dumbarton foundry, was fined £2 by Professor Gloag.

A number of mass meetings and conferences provided trade unionists with the opportunity to vent their anger at the restrictions on their freedom and to demand drastic changes in the law. Thus as early as mid-August, a meeting of all Clyde trade unions affiliated to the Federation of Engineering and Shipbuilding Trades (FEST) had taken place in the Christian Institute in Glasgow.<sup>26</sup> Yet despite the fact that it was held within a few days of the Fairfield coppersmiths' and Lobnitz holders-on prosecutions, the principal complaints were directed against the leaving certificate scheme.<sup>27</sup> For example, workers undertaking only a small amount of munitions work were being prevented from joining firms wholly engaged on such tasks. Apparently this was due to the tribunal's interpreting the leaving certificate scheme as applying to all establishments engaged on munitions work, no matter how small a proportion of the total time was spent by a worker on war work. In fact the Treasury Solicitor later advised that "occasional" employment on munitions work would entitle an employee to leave without a leaving certificate, whereas "substantial" munitions employment was necessary if the employer wished to retain his workmen.<sup>28</sup> But by then the damage would already have been done; indeed exacerbated if a differently composed tribunal were to reach, as was perfectly possible in the first few months, the opposite conclusion in a similar situation.

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<sup>26</sup>Glasgow Herald, August 14, 1915.

<sup>27</sup>In fact teething troubles at the outset compounded the difficulties in administering the scheme since the actual certificates only became available two weeks after the regulations were issued. Particular individuals - an ASE member at Burmeister & Wain and a woodcutting machinist at John Brown's Shipyard - were particularly affected when they desired to leave their employment at the end of July, at a point in time when no certificates were available. At the Balfour-Macassey enquiry, the employer's representative expressed his regret at the "unfortunate experience" suffered, but pleaded that the employers "had really no more control than the workmen themselves". See MUN 5/80/341/3, "Clyde Munition Workers: Minutes of Evidence", pp 268-9, 345-9, 369-70; also MUN 5/73/324/15/1, "Memorandum by Lynden Macassey: Causes of Unrest among Munition Workers on Clyde and Tyneside...", December 18, 1915."

<sup>28</sup>The point in this example is not that the men's original employers refused to release them, but that no employer would hire them without a certificate.  
OHMM, Vol. IV, Part II, p.21.



A month after the Christian Institute meeting, a mass meeting of 300 ASE shop stewards, chaired by David Kirkwood, was held in Diamond's Hall in Gorbals. A resolution was carried demanding that the district committee communicate with the London executive for "effective steps" to abolish the "slavery clauses". As the Forward commented,<sup>29</sup>

"The feeling among the rank-and-file is gathering in bitterness and the declarations at the shop stewards' meeting that free Britons were better than slave Britons for shell or any other kind of manufacture were received with an applause that any politician - Mr Lloyd George or any other - would do well to understand before making fresh compulsory regulations".

And, of course, just two weeks later, Brownlie, the A.S.E. chairman, came up to Glasgow to address a local aggregate meeting in the City Hall. The meeting, described by Paterson in his report to London as a "bear garden",<sup>30</sup> effectively rejected Brownlie's plea for cooperation with the Munitions Act, and passed a number of hostile resolutions, including one condemning the system of leaving certificates.<sup>31</sup> Indeed, William Brodie, the local district delegate, simultaneously reported in the ASE Journal that,<sup>32</sup>

"We are still having trouble through the application of the Munitions Act, many of our members being almost in revolt at being bound over to one employer."

Lynden Macassey, one of the ministry's trouble-shooters, had, of course, analysed the Clyde unrest in conspiratorial terms. Since he could detect "no general industrial or economic hardship resulting from the Munitions Act", he was forced to conclude in December 1915 that the "universal irritation, unveiled hostility to the Act and

<sup>29</sup> Forward, September 18, 1915.

<sup>30</sup> OHMM, Vol. IV, Part II, p.55

<sup>31</sup> Glasgow Herald, October 1, 1915.

<sup>32</sup> ASE, Monthly Journal and Report, October 1915, p.27.

corroding suspicion of every clause under the Act", had been sedulously fostered by two or three local union officials who had "circulated only too effectively, untrue statements and garbled and misleading versions", of its effects. Thenceforth, he argued, "the crowd overtook their leaders", and the latter, allegedly viewing Clydeside as a stepping-stone to the general-secretaryship of their unions, were,<sup>33</sup>

"...forced to inflate and paint as crowning tyrannies of the Munitions Act, every pettifogging complaint that in peacetime would not have secured a report by a shop steward to his union's local branch."

Yet if he scarcely had William Brodie in mind when he penned these remarks (and, therefore, if he conveniently ignored the critical reports of "responsible" union officials such as Brodie, Sharp and John Thomson of the Blacksmiths) he could perhaps point to the relatively trivial origins of some of the more celebrated confrontations, including the Fairfield shipwrights' and Lobnitz<sup>2</sup> holders-on disputes. On the other hand, the manipulation of the leaving certificate by the shipyard employers in particular, as a new and powerful instrument of discipline, matched the deployment of the recently instituted Ordering of Work rules elsewhere. Moreover, the seemingly endless list of indefensible refusals of certificates, readily accessible from sources such as W.C. Anderson's series on "The Munitions Act at Work", which appeared in the Forward,<sup>34</sup> provided ample chapter and verse for a damning critique of the scheme. Thus it could scarcely be disputed that the restrictions were resented for their novelty and for their enhancement of the authority of foremen and under-managers, not because ambitious local union officials had an eye to the main

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<sup>33</sup>MUN 5/73/324/15/1, op.cit.

<sup>34</sup>The series ran for a number of weeks in the Forward during September and October 1915. The leaving certificate item was published on September 25, 1915.



chance, as Macassey had asserted.

While it remains true, nonetheless, as Macassey did point out, that the scale of unrest among Clyde and Tyneside workers was not equalled elsewhere, the expression of dissatisfaction was country-wide. Indeed, whereas criticism of leaving certificate decisions by the Glasgow tribunal perhaps failed to match the anger vented at the outcome of strike prosecutions, yet elsewhere, hostility was specifically directed to the tribunal's handling of leaving certificate applications. For example, the Yorkshire Factory Times considered that,<sup>35</sup>

"... investigations into cases before such tribunals will surely open the eyes of the working-class public to the devilish contrivance that means their semi-enslavement".

Indeed, while section seven stipulated that a worker or his trade union representative could complain to the tribunal that the employer's consent had been "unreasonably withheld", it was widely accepted that no more sympathy would be gained from that particular quarter, even with the presence of a workmen's assessor. Thus it might have been thought that if the employer had in effect already dispensed with the services of an employee, then it would not be possible for the tribunal to deny the applicant a certificate, even if the employer had vindictively refused one.

"But the astonishing thing," complained one correspondent to the Nation,<sup>36</sup> "is that (in Yorkshire, at any rate) the Munitions Tribunals are taking the same line as the employers, and deliberately preventing men who have misbehaved from obtaining employment ... and assuredly the legislature never intended it."

Yet such was the effect of the wording of the section which declared only that tribunals "may", not "shall", issue a leaving certificate "unreasonably" withheld by employers. Indeed, it was not until the amendment proposals of May 1917 that a remedy for the loss of valuable

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<sup>35</sup>Yorkshire Factory Times, November 11, 1915; Cf., ibid., October 7, 1915.  
<sup>36</sup>Nation, October 9, 1915, p.53.

manpower was drafted, only to be consigned to the waste-paper basket when the government capitulated to working-class opinion by abolishing the scheme altogether.<sup>37</sup>

Trade union officials, whether or not vying for the general-secretaryship of their unions, regularly submitted a barrage of indignant reports. For example, from Middlesex, it was stated that,<sup>38</sup>

"Munitions tribunals are still giving palpably unfair decisions, and in order to square their consciences, many members are being compelled to take their six weeks' holiday, in compliance with the Munitions Act, 1915, in order to enable them to transfer their productive ability to centres where employers are apparently less given to pre-war commercialism, in the present national crisis."

At the Edinburgh tribunal, it was complained that the evidence of a works manager was preferred to that of three ASE members giving testimony, with the result that the leaving certificate application in question was refused,<sup>39</sup> while the Cardiff district delegate of the ASE denounced the institution of "courts of three where one decides".<sup>40</sup> Though an official might occasionally report that the local tribunal was making <sup>little</sup> impact in his particular district,<sup>41</sup> two national conferences of engineering and shipbuilding trade unions, specifically to review "glaring cases of arbitrary decisions" by tribunals,<sup>42</sup> were held in October.<sup>43</sup> Once again, the principal focus of complaint was the administration of the leaving certificate scheme by the tribunals, though the recent imprisonment of the Fairfield shipwrights inevitably prompted the demand that the tribunals' powers of imprisonment be abolished.

<sup>37</sup> OHMM, Vol. V, Part I, p.46. On the abolition of the certificate and the consequences thereof, see infra.

<sup>38</sup> ASE, Monthly Journal and Report, November 1915, p.55.

<sup>39</sup> Ibid., October 1915, p.27.

<sup>40</sup> Ibid., February 1916, p.45. Cf., ibid., October 1915, p. 42(also Cardiff).

<sup>41</sup> SSA, Quarterly Reports, January-March 1916, p.19 (East and South-East district).

<sup>42</sup> ASE, Monthly Journal and Report, November 1915, p.36.

<sup>43</sup> Glasgow Herald, October 23, 1915; Engineer, October 15, 1915; SSA, Quarterly Reports, July-September 1915, p.25.



Finally, of course, the national conference of 55 trade unions in November and the separate meeting with the ASE in December 1915 left Lloyd George in no doubt where the official trade union representatives stood on the matter.

"He noticed", reported the press,<sup>44</sup> "that most of the amendments were in the direction of what might be called reciprocity. There was a feeling that if a workman could not discharge his employer without a certificate from a tribunal, the employer ought not to be able to discharge the workman without a similar certificate."

It is clear that from such conferences emanated the thoroughgoing programme of replacing the tribunals by local joint committees. These would have had the authority to determine not the leaving certificate application by a worker where the employer objected, but the request of the employer to retain the worker if the latter submitted his notice to leave.<sup>45</sup> The employers, of course, adamantly opposed any proposal which entailed the repeal of the leaving certificate scheme, arguing that it would deprive the Act of its "whole essence".<sup>46</sup> Indeed, far from accepting that the activities of the tribunal were provoking widespread unrest, the engineering and shipbuilding employers who met Lloyd George, Addison and Llewellyn Smith in December 1915 were of the opinion that the tribunals had been "altogether too lenient in their administration of the Act".<sup>47</sup> For example, apart from the criticisms of those individual employers on Clydeside which had hastened the departure of Gibson, Gloag and Andrew, the Clyde shipbuilders' and engineering associations expressed dissatisfaction with tribunal decisions which had apparently granted leaving certificates

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<sup>44</sup>Glasgow Herald, December 1, 1915; OHMM, Vol. IV, Part II, p.69.  
<sup>45</sup>See, for example, Glasgow Trades Council, Munitions of War Act 1915 (1915), para. 7, John Hodge had originally proposed unsuccessfully in the Commons that the previous consent of the tribunal be obtained, in the event that an employer wished to discharge or suspend (as distinct from retain) a worker. See OHMM, Vol. I, Part IV, p.41.  
<sup>46</sup>Ibid., Vol. IV, Part II, p.70.  
<sup>47</sup>Ibid.

to applicants seeking higher wages elsewhere. This, said the Clyde employers, was a wages question which ought to have been a matter for Board of Trade arbitration under Part I of the Act.<sup>48</sup> The employers, it seems, had shown their impatience at the spectacle of restrictive labour legislation being appropriated for their own ends by the very workers whose freedoms it was designed to curb.

Yet despite the ambiguous quality of these labour controls, to which the employers' irritation testifies, it remains true, nevertheless, that from virtually every corner of the land, the enforcement of the leaving certificate scheme brought in its train a whirlwind of trade union outrage and indignation.

In short, the picture portrayed is of an abominable system which enabled employers and foremen to visit unspeakable punishments on their employees, or to exact retribution from employees from whom they had parted, by depriving the latter of their liberty, for a period usually of six weeks, to secure alternative employment. Furthermore, the employers, it was alleged, were sustained in their endeavours by the refusal of the tribunals to intercede on the workmen's behalf.

The above interpretation certainly appears to correspond, at first sight, to the recommendations of the Balfour-Macassey Commission, and reflects the view of the leaving certificate primarily as an instrument of discipline or retribution, wielded by the employer. Thus apart from the interim report on the Fairfield shipwrights' case, which the unions took to illustrate the scope for abuse offered by the leaving certificate scheme, the bulk of the main Balfour-Macassey report also devoted itself to the local operation of the scheme. In particular, the commissioners recommended that the employer be forbidden to enter reasons for dismissal on the certificate, thereby hoping to

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<sup>48</sup>CSA, Minute Book No.9, September 28, 1915; NWETEA, Minute Book No.7, September 24, 1915.



pre-empt the recurrence of episodes similar to that at Fairfield. Second, where a dismissal occurred, a workman ought immediately to receive a certificate unless he acted improperly in order to secure dismissal. Here the object was clearly to strike at the callous indifference of employers to the fate of former employees considered unsuitable or surplus to requirements or whose contracts had come to an end; while the punishment of six weeks unemployment was retained as a deterrent against employee misconduct which resulted in a sacking. Third, if a munitions tribunal decided that the employer had unreasonably withheld a leaving certificate, it might award compensation for any unemployment suffered as a result. All these recommendations were eventually embodied in the 1916 Act though not the further suggestion that in the event of an employer refusing a certificate, he should be required to issue the employee with a written explanation for his decision. Nor was the recommendation adopted that in every establishment a clear procedure should be laid down for the issuance of certificates, since confusion as whether responsibility lay with foremen or managers or timekeepers had led in some cases to delay, misunderstanding and irritation.<sup>49</sup>

What the above recommendations possessed in common was that they derived from the evidence heard as to how employers had manipulated the leaving certificate scheme either deliberately, or thoughtlessly. They did not, except indirectly, direct themselves to any possible failings on the part of the tribunal per se.

Perhaps the classic illustration of vindictive maltreatment by an employer was the case of David Fleming, one of the Fairfield shipwrights prosecuted for striking in early September. The story

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<sup>49</sup> OHMM, Vol. IV, Part II, pp 64-5; Clyde Munition Workers, Report of the Rt. Hon. Lord Balfour of Burleigh and Mr. Lynden Macassey, K.C., Cd. 8136, 1915.

recounted before the Balfour-Macasseay Commission was that a few days after the trial of the shipwrights, Fleming had been ordered to work with another foreman in a different part of the yard but had refused because of previous "trouble" with that particular foreman. Instead he asked for his insurance books and a leaving certificate, and though told that his books would be delivered to the Labour Exchange, thus indicating that Fairfield no longer had need of his services, they were not in fact sent on. As a result, Fleming,

"... walked about the streets from 12 September to 6 October pleading between the Fairfield firm and the Labour Exchange in Govan for his books and a clearance line, and he was refused from the fact that the Fairfield firm reserve to themselves the right to refuse a man his clearance line on application..."<sup>50</sup>

Eventually he applied to the munitions tribunal for a certificate where Cmdr. Gibson lambasted the firm for having shamelessly abused its power.

"The Chairman", reported the Glasgow Herald,<sup>51</sup> "said the conduct of the company was most reprehensible in those circumstances. It was grossly unfair to the workmen that they should be made to walk the streets practically unless there was some reasonable ground that could be adduced for the action of the firm in withholding the certificate."

Of course, as presented to the Balfour-Macasseay Commission, the episode was not seen as an isolated incident, but was symptomatic of the manner in which "unregulated power"<sup>52</sup> was conferred on management by virtue of their hold over workmen's freedom of movement. Thus workers who wished to take up promoted posts as foremen or inspectors were prevented from so doing by their employers, as were skilled men temporarily on labouring work who wished to return to their trades. Medical certificates were frequently not accepted by employers as justifications for the grant of clearance lines while young journeymen

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<sup>50</sup> MUN 5/80/341/3, "Clyde Munition Workers: Minutes of Evidence", pp 406-7; 539-52, at p.407.

<sup>51</sup> Glasgow Herald, October 5, 1915. Cf., AIMS, Monthly Report, January 1916, p. 250.

<sup>52</sup> OHMM, Vol. IV, Part II, p.61.



who had just completed their apprenticeships were deprived of certificates which would have enabled them to obtain elsewhere the standard, and not just the improvers', rate.<sup>53</sup> As the Official History has conveniently summarised in general terms, much of the evidence to the Commission,<sup>54</sup>

"Some managers and foremen became more autocratic and dictatorial in their treatment of the men, and began to use their new power by withholding certificates to enforce changes, which previously could have been effected only by negotiation... Men, dismissed for words with a foreman or refusal to do what they were told, were penalised by delay in issuing certificates, and kept idle for a week or more. Men thrown out of work by a breakdown or a strike were retained without compensation by the refusal of clearance lines. Men attracted from other districts by the prospect of working overtime and earning good money were not allowed to leave, although the loss of overtime made it very difficult to keep up two homes."

Indeed, we have already seen in previous chapters the complaints of inter alia, Beardmore caulkers put on to less agreeable water testing, the hoarding of skilled labour, the grievances of Fairfield copper-smiths at the threat posed by rival plumbers and the insistence of Barclay Curle shipyard on transferring men between separate sites, a demand which struck at the prevailing custom which prevented the management from deploying rivetting squads as it pleased. In all these cases, the presence of the leaving certificate scheme served to exacerbate the existing conflicts over managerial prerogative claims.

#### Tribunal Adjudications

The labour unrest on Clydeside, and the determination, in the words of Lynden Macassey,<sup>55</sup> to "cripple and crab" the Munitions Act

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<sup>53</sup>Ibid., pp. 62-3.

<sup>54</sup>Ibid., p 61; see also Reid, "The Division of Labour in the British Ship-building Industry, 1880-1920" op.cit., for account of the Balfour-Macassey proceedings.

<sup>55</sup>MUN 5/73/324/15/1, op.cit.

in the district, therefore provides a dramatic backdrop to the exercise of its discretion by the local tribunal.

But to what extent, if at all, did this hostile environment of feverish condemnation actually inform the tribunal's decision-making in respect to leaving certificate applications? Did it in fact exert an influence on the tribunal members in such a fashion that they were more likely than not to grant certificates, in the belief that unrelenting denials would merely provoke further widespread unrest? At first sight, the outcome of those hearings which so angered the Ministry of Munitions that it resolve to remove the erring chairmen from office, appears to lend qualified support to this proposition. But as the close analysis of those decisions undertaken in chapter six indicated, the appeal of "humanitarianism" was a stronger factor than intimidation in the decision-making of Gibson and Andrew. Indeed, all one can say with any degree of confidence is that among the three tribunal chairmen who were eventually replaced, only Gloag appears to have withered before the onslaught of labour protests and, significantly, the occasions tended to be prosecution proceedings rather than leaving certificate applications. Second, it cannot be denied that the ministry officials themselves may have reacted against Gibson and Andrew in the knowledge that labour unrest was an endemic feature of the Glasgow environment. Thus it could plausibly be argued that the outspokenness of Gibson and Andrew was in part the occasion, but not the whole cause, of their removal, and that fears of impending disruptive opportunism, catastrophic to production schedules among the leading employers, motivated the ministry to install the visibly harsher regime of the two sheriffs, Fyfe and Craigie.

Yet notwithstanding the indulgences of Gibson and his colleagues which induced such paroxysms of rage among the officials and a number of major employers, the following tables clearly demonstrate that



no obvious statistical link existed between discretionary decision-making and the level of local militancy in Glasgow.

Table 9.1 Leaving Certificate Cases, January 1, 1916 - October 20, 1917<sup>(1)</sup>

	Granted (1)	Refused (2)	Withdrawn (3)	Unnecessary (4)	Total (5)
Birmingham	1571	1375	2326	319	5591
Coventry	394	662	504	39	1599
Glasgow	2965	3871	2885	710	10161
Metropolitan	1457	2475	1260	366	5558
Newcastle	564	880	596	87	2127
Sheffield	822	987	582	281	2672
National <sup>(2)</sup>	4007	6528	3901	774	15210

Source: Extracted from weekly returns in LAB 2/66/G129/3

Notes: (1) The leaving certificate scheme was abolished after this date.  
 (2) This covers the period only from July 1915 to July 1916.  
 See Cd. 8143 (1915) and Cd. 8360 (1916), Return of Cases heard before Munitions Tribunals.

Translating the above figures into percentage terms, we reach the following results:

Table 9.2 Leaving Certificate Returns as Percentages of the Total,  
January 1, 1916 to October 20, 1917

	Granted (1)/(5)	Refused (2)/(5)	Withdrawn (3)/(5)	Unnecessary (4)/(5)	Total (5)
Birmingham	28.1%	24.6%	41.6%	5.7%	100%
Coventry	24.6%	41.4%	31.5%	2.4%	100%
Glasgow	26.5%	38.1%	28.4%	7%	100%
Metropolitan	26.2%	44.5%	22.7%	6.6%	100%
Newcastle	26.5%	41.4%	28%	4.1%	100%
Sheffield	30.8%	36.9%	21.8%	10.5%	100%
National	26.3%	43%	25.6%	5.1%	100%

Source: As in Table 9.1

Note: The percentages here all rounded up and the totals will therefore exceed 100%.

Table 9.2 therefore reveals the somewhat remarkable result that the percentage of successful to other applications granted by the Glasgow tribunal over the period January 1, 1916 to October 20, 1917 <sup>almost</sup> matches/exactly the percentage taken from the national figures in the twelve months from July 1915 to July 1916. Indeed, looking at the Glasgow figures in more detail, we can compare the regime of Gibson and his colleagues, albeit for a limited period of three months (January to April 1916) with that of Fyfe and Craigie. The results show that while Gibson et al., granted a higher proportion of certificates over a period of three months than did the two sheriffs from April 1916 they also refused a proportionately greater number of certificates than did Fyfe and Craigie. As for the slight disparity in the proportion of withdrawn applications, it is not clear what factors were at play here. According to The Times,<sup>56</sup> withdrawals invariably signified

Table 9.3 Glasgow Leaving Certificate Cases

	Granted (1)	Refused (2)	Withdrawn (3)	Unnecessary (4)	Total (5)
January 1916 - October 1917	2695	3871	2885	710	10161
January 1916 - end March '16	357	493	260	8	1118
April 1916 - October 1917	2338	3378	2625	702	9043

Table 9.4 Glasgow Leaving Certificate Cases: Percentages

	Granted (1)	Refused (2)	Withdrawn (3)	Unnecessary (4)	Total (5)
January 1916 - October 1917	26.5%	38.1%	28.4%	7%	100%
January 1916 - end March '16	31.9%	44%	23.3%	0.7%	100%
April 1916 - October 1917	25.9%	37.4%	29.2%	7.8%	100%

<sup>56</sup>The Times, February 21, 1916.



that employers granted certificates prior to the hearing, rather than that the employee ultimately opted to remain with his existing employer. Yet whether this was as a result of more effective "collective bargaining by litigation" after April 1916, or of more successful "honest brokerage" by Fyfe and Craigie, or whether the labour market (as is unlikely) became marginally looser in the district after April 1916 or whether employers became more concerned than formerly with the cost and expense of attending hearings, is a matter for speculation.

Finally, though there is a pronounced disparity in the proportion of cases where a certificate was held to be unnecessary, and though, as we will see later, this became a contentious matter in Sheffield, the figures in Glasgow are too small, it is submitted, to yield significant findings.

It is, nonetheless, reasonable to conclude that at the aggregate level, there was no immense and unbridgeable disparity between the two dynasties. Indeed, if we confine our gaze solely to refusal rates, we observe that, if anything, Gibson and his colleagues were more severe on applicants than their successors. And, of course, it was precisely when Fyfe and Craigie were appointed to adjudicate upon leaving certificate applications that the labour unrest in Glasgow abated.

If we consider the Glasgow leaving certificate returns over time (Tables 9.5 and 9.6), a contradictory picture emerges. First, the rate of refusals fell significantly for a year after July 1916 which might be consistent with the view that with productivity rising in the factories, the need of the Army for manpower now assumed priority. Yet against the reduction in the number of refusals in this period, there is also a fall in the number of certificates granted. Presumably, therefore, few applicants were badged <sup>munitions</sup> / workers seeking to join the Army. Moreover, it was not as if the demand for labour for the

factories had actually slackened. For in June 1916, the Ministry of Munitions was calling for a further 32,000 factory workers and for further releases from the Army.<sup>57</sup> Similarly, if we look at the figures for the last four months of the scheme (July to October 1917) we note a significant rise in the number of refusals and a modest increase in the number of certificates granted. It is suggested that the most plausible explanation is that the onset of submarine warfare influenced the tribunal's approach to applications. Thus applications would have little or no chance of success if they emanated from the shipbuilding trades, but may well have been favourably considered if originating from a different industrial sector. On the other hand, in another major shipbuilding district, Newcastle (Tables 9.7 and 9.8), the rate of refusals in the period July to October 1917 was significantly lower than in the previous periods whereas the rate of grants over time matched closely the Glasgow figures.

The remaining four districts examined (Tables 9.9 to 9.16) did, however, display a fairly consistent pattern of both a rising grant rate over the period July 1916 to October 1917 and a falling refusal rate over the same period, suggesting a gradual relaxation of the rigours of the scheme as war weariness developed. Thus, if the manpower shortage was, indeed, acute in the period before Passchendaele (and became a "crisis" thereafter), it is not at all clear that this was reflected in the adjudications of the Birmingham, Coventry, Metropolitan and Sheffield tribunals. On the other hand, perhaps these tribunals, like the Manpower Board, were engaged in a delicate game of shuffling the pack, and that changes in the rates themselves were not significant. Here, in particular, the lack of comprehensive lists of

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<sup>57</sup>Wrigley, David Lloyd George and the British Labour Movement, op.cit., p. 168.



tribunal hearings renders any interpretative efforts extremely hazardous. For the possibility remains that shifts in grant and in refusal rates may simply reflect the different industrial, skill or domestic circumstances of applicants presenting themselves arbitrarily before the tribunal.

Table 9.5 Glasgow Leaving Certificate Cases. Half-yearly returns

Weeks Ending	Granted	Refused	Withdrawn	Unnecessary	Total
Jan 8, 1916 - July 1, 1916	785	1173	650	111	2719
July 8, 1916 - Dec 30, 1916	976	1221	989	138	3324
Jan 6, 1917 - June 30, 1917	614	956	980	277	2827
July 7, 1917 - Oct 20, 1917	<u>320</u>	<u>521</u>	<u>266</u>	<u>184</u>	<u>1291</u>
July 8, 1916 - Oct 20, 1917	<u>1910</u>	<u>2698</u>	<u>2235</u>	<u>599</u>	<u>7442</u>
Jan 8, 1916 - Oct 20, 1917	<u>2695</u>	<u>3871</u>	<u>2885</u>	<u>710</u>	<u>10161</u>

Table 9.6 Glasgow Leaving Certificate Cases Half-yearly returns: Percentages

Weeks Ending	Granted	Refused	Withdrawn	Unnecessary	Total
Jan 8, 1916 - July 1, 1916	28.9%	43.1%	24%	4.1%	100%
July 8, 1916 - Dec 30, 1916	29.4%	36.7%	29.8%	4.2%	100%
Jan 6, 1917 - June 30, 1917	21.7%	33.8%	34.7%	9.8%	100%
July 7, 1917 - Oct 20, 1917	<u>24.8%</u>	<u>40.4%</u>	<u>20.6%</u>	<u>14.3%</u>	<u>100%</u>
July 8, 1916 - Oct 20, 1917	<u>25.7%</u>	<u>36.2%</u>	<u>30%</u>	<u>8%</u>	<u>100%</u>
Jan 8, 1916 - Oct 20, 1917	<u>26.5%</u>	<u>38.1%</u>	<u>28.4%</u>	<u>7%</u>	<u>100%</u>

Table 9.7 Newcastle Leaving Certificate Cases. Half-yearly returns

Weeks Ending	Granted	Refused	Withdrawn	Unnecessary	Total
Jan 8, 1916 - July 1, 1916	197	291	126	28	642
July 8, 1916 - Dec 30, 1916	203	296	188	28	715
Jan 6, 1917- June 30, 1917	111	222	194	19	546
July 7, 1917- Oct 20, 1917	<u>53</u>	<u>71</u>	<u>88</u>	<u>12</u>	<u>224</u>
July 8, 1916- Oct 20, 1917	<u>367</u>	<u>589</u>	<u>470</u>	<u>59</u>	<u>1485</u>
January 8, 1916 - Oct 20, 1917	<u>564</u>	<u>880</u>	<u>596</u>	<u>87</u>	<u>2127</u>

Table 9.8 Newcastle Leaving Certificate Cases. Half-yearly returns:  
Percentages

Weeks Ending	Granted	Refused	Withdrawn	Unnecessary	Total
Jan 8, 1916- July 1, 1916	30.7%	45.3%	19.6%	4.4%	100%
July 8, 1916- Dec 30, 1916	28.4%	41.4%	26.3%	3.9%	100%
Jan 6, 1917- June 30, 1917	20.3%	40.7%	35.5%	3.5%	100%
July 7, 1917- Oct 20, 1917	<u>23.7%</u>	<u>31.7%</u>	<u>39.3%</u>	<u>5.4%</u>	<u>100%</u>
July 8, 1916- Oct 20, 1917	<u>24.7%</u>	<u>39.7%</u>	<u>31.6%</u>	<u>4%</u>	<u>100%</u>
Jan 8, 1916- Oct 20, 1917	<u>26.5%</u>	<u>41.4%</u>	<u>28%</u>	<u>4.1%</u>	<u>100%</u>



Table 9.9 Birmingham Leaving Certificate Cases. Half-yearly returns

Weeks ending	Granted	Refused	Withdrawn	Unnecessary	Total
Jan 8, 1916- July 1, 1916	280	278	380	70	1008
July 8, 1916- Dec 30, 1916	498	476	669	99	1742
Jan 6, 1917- June 30, 1917	509	455	880	103	1947
July 7, 1917- Oct 20, 1917	<u>284</u>	<u>166</u>	<u>397</u>	<u>47</u>	<u>894</u>
July 8, 1916- Oct 20, 1917	<u>1291</u>	<u>1097</u>	<u>1946</u>	<u>249</u>	<u>4583</u>
Jan 8, 1916- Oct 20, 1917	<u>1571</u>	<u>1325</u>	<u>2326</u>	<u>319</u>	<u>5521</u>

Table 9.10 Birmingham Leaving Certificate Cases. Half-yearly returns:  
Percentages

Weeks ending	Granted	Refused	Withdrawn	Unnecessary	Total
Jan 8, 1916- July 1, 1916	27.8%	27.6%	37.7%	6.9%	100%
July 8, 1916- Dec 30, 1916	28.6%	27.3%	38.4%	5.7%	100%
Jan 6, 1917- June 30, 1917	26.1%	23.4%	45.2%	5.3%	100%
July 7, 1917- Oct 20, 1917	<u>31.8%</u>	<u>18.6%</u>	<u>44.4%</u>	<u>5.3%</u>	<u>100%</u>
July 8, 1916- Oct 20, 1917	<u>28.2%</u>	<u>23.9%</u>	<u>42.5%</u>	<u>5.4%</u>	<u>100%</u>
Jan 8, 1916- Oct 20, 1917	<u>28.1%</u>	<u>24.6%</u>	<u>41.6%</u>	<u>5.7%</u>	<u>100%</u>

Table 9.11 Coventry Leaving Certificate Cases: Half-yearly Returns

	Granted	Refused	Withdrawn	Unnecessary	Total
Weeks ending					
Jan 8, 1916- July 1, 1916	89	161	134	25	409
July 8, 1916- Dec 30, 1916	91	215	126	7	439
Jan 6, 1917- June 30, 1917	141	204	169	5	519
July 7, 1917- Oct 20, 1917	<u>73</u>	<u>82</u>	<u>75</u>	<u>2</u>	<u>232</u>
July 8, 1916- Oct 20, 1917	<u>305</u>	<u>501</u>	<u>370</u>	<u>14</u>	<u>1190</u>
Jan 8, 1916- Oct 20, 1917	<u>394</u>	<u>662</u>	<u>504</u>	<u>39</u>	<u>1599</u>

Table 9.12 Coventry Leaving Certificate Cases: Half-yearly Returns:

	Granted	Refused	Withdrawn	<u>Percentages</u> Unnecessary	Total
Weeks ending					
Jan 8, 1916- July 1, 1916	21.8%	39.4%	32.8%	6.1%	100%
July 8, 1916- Dec 30, 1916	20.7%	49%	28.7%	1.6%	100%
Jan 6, 1917- June 30, 1917	27.2%	39.3%	32.6%	1%	100%
July 7, 1917- Oct 20, 1917	<u>31.5%</u>	<u>35.3%</u>	<u>32.3%</u>	<u>0.9%</u>	<u>100%</u>
July 8, 1916- Oct 20, 1917	<u>25.6%</u>	<u>42.1%</u>	<u>31.1%</u>	<u>1.2%</u>	<u>100%</u>
Jan 8, 1916- Oct 20, 1917	<u>24.6%</u>	<u>41.4%</u>	<u>31.5%</u>	<u>2.4%</u>	<u>100%</u>



Table 9.13 Metropolitan Leaving Certificate Cases: Half-yearly returns

	Granted	Refused	Withdrawn	Unnecessary	Total
Weeks ending					
Jan 8, 1916- July 1, 1916	382	691	283	116	1472
July 8, 1916- Dec 30, 1916	404	735	355	100	1594
Jan 6, 1917- June 30, 1917	436	737	427	89	1689
July 7, 1917- Oct 20, 1917	<u>235</u>	<u>312</u>	<u>195</u>	<u>61</u>	<u>803</u>
July 8, 1916- Oct 20, 1917	<u>1075</u>	<u>1784</u>	<u>977</u>	<u>250</u>	<u>4086</u>
Jan 8, 1916- Oct 20, 1917	<u>1457</u>	<u>2475</u>	<u>1260</u>	<u>366</u>	<u>5558</u>

Table 9.14 Metropolitan Leaving Certificate Cases: Half-yearly returns : Percentages

	Granted	Refused	Withdrawn	Unnecessary	Total
Weeks ending					
Jan 8, 1916- July 1, 1916	26%	46.9%	19.2%	7.9%	100%
July 8, 1916- Dec 30, 1916	25.3%	46.1%	22.3%	6.3%	100%
Jan 6, 1917- June 30, 1917	25.8%	43.6%	25.3%	5.3%	100%
July 7, 1917- Oct 20, 1917	<u>29.3%</u>	<u>38.9%</u>	<u>24.3%</u>	<u>7.6%</u>	<u>100%</u>
July 8, 1916- Oct 20, 1917	<u>26.3%</u>	<u>43.7%</u>	<u>23.9%</u>	<u>6.1%</u>	<u>100%</u>
Jan 8, 1916- Oct 20, 1917	<u>26.2%</u>	<u>44.5%</u>	<u>22.7%</u>	<u>6.6%</u>	<u>100%</u>

Table 9.15 Sheffield Leaving Certificate Cases: Half-yearly returns

	Granted	Refused	Withdrawn	Unnecessary	Total
Weeks ending					
Jan 8, 1916- July 1, 1916	156	319	116	37	628
July 8, 1916- Dec 30, 1916	246	313	116	140	815
Jan 6, 1917- June 30, 1917	261	219	207	74	761
July 7, 1917- Oct 20, 1917	<u>159</u>	<u>136</u>	<u>143</u>	<u>30</u>	<u>468</u>
July 8, 1916- Oct 20, 1917	<u>666</u>	<u>668</u>	<u>466</u>	<u>244</u>	<u>2044</u>
Jan 8, 1916- Oct 20, 1917	<u>822</u>	<u>987</u>	<u>582</u>	<u>281</u>	<u>2672</u>

Table 9.16 Sheffield Leaving Certificate Cases: Half-yearly returns :  
Percentages

	Granted	Refused	Withdrawn	Unnecessary	Total
Weeks ending					
Jan 8, 1916- July 1, 1916	24.8%	50.8%	18.5%	5.9%	100%
July 8, 1916- Dec 30, 1916	30.4%	38.4%	14.2%	17.2%	100%
Jan 6, 1917- June 30, 1917	34.3%	28.8%	27.2%	9.7%	100%
July 7, 1917- Oct 20, 1917	<u>34%</u>	<u>29.1%</u>	<u>30.6%</u>	<u>6.4%</u>	<u>100%</u>
July 8, 1916- Oct 20, 1917	<u>32.6%</u>	<u>32.7%</u>	<u>22.8%</u>	<u>11.9%</u>	<u>100%</u>
Jan 8, 1916- Oct 20, 1917	<u>30.8%</u>	<u>36.9%</u>	<u>21.8%</u>	<u>10.5%</u>	<u>100%</u>



If we examine the statistics from the other districts listed, the first point of note is that the tribunal presided over by Sir William Clegg, the "Tsar of Sheffield"<sup>58</sup> (Tables 9.15 and 9.16) granted more certificates outright than did those other tribunals for whom figures have been presented. Yet Clegg was considered by trade unionists in the city to be a domineering and highly unpopular chairman. Indeed, the ASE district secretary, William Gavigan, had written to the Ministry of Munitions in August 1915 complaining of the appointment of Clegg and of F.B. Dingle as chairman and clerk, respectively, of the Sheffield tribunal.

"We feel", he wrote,<sup>59</sup> "that the interests of justice and fair play would have been better served by the selection for one or other of the offices, of some gentleman ultimately acquainted with the difficulties and objects of the munitions workers in this city. We cannot under the circumstances confidently anticipate that we shall receive in the deliberations of that tribunal, the help to which all persons whose cases are sub-judice are entitled."

The cases from Sheffield cited by W.C. Anderson in one of his contributions to the Forward,<sup>60</sup> certainly appeared to provide early testimony to these complaints. Indeed, dissatisfaction with Clegg was expressed, but not translated into direct action,<sup>61</sup> in early 1917 when Ted Lismer, chairman of the official engineering unions' joint board, as

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<sup>58</sup>Hinton, The First Shop Stewards' Movement, op.cit., p.207; H.C. Debates, 5th Series, Vol.92, col. 398, March 28, 1917. Clegg was presumably related to the Sheffield solicitor J.C. Clegg, an influential Football Association official at the turn of the century. See Tony Mason, Association Football and English Society 1863-1915 (Brighton: Harvester Press, 1980), p.105.

<sup>59</sup>LAB 2/52/MT135/1 "Sheffield Local Munitions Tribunal, Constitution File", Gavigan to Ministry of Munitions, August 7, 1915. On Gavigan, see Bill Moore, Sheffield Shop Stewards, 1916-1918, (London: CPGB, 1960) pp.11,18.

<sup>60</sup>Forward, September 25, 1915.

<sup>61</sup>Hinton, op.cit., p.207.

well as a prominent member of the Sheffield Workers' Committee,<sup>62</sup> intimated his resignation as a workmen's assessor.. from the tribunal.<sup>63</sup> His explanations ranged from the infrequency with which he was asked to serve, and "the attitude of the chairman in recent decisions given by him", to the refusal even to acknowledge the demand of his union, the Steam Engine Makers, that Clegg be sacked. Not unexpectedly, however, his resignation did not cause the Ministry of Munitions undue worry. As Keenlyside wrote to Wolff,<sup>64</sup>

"Probably, therefore, Mr Lismer would be a good riddance, but I suppose it would be politic to suggest that he should re-consider his decision. I do not, however, think that we need be too cordial".

Thus where, on the bald statistics, Sheffield was the most generous of the six tribunals in granting certificates, its refusal rate was also the second lowest, just slightly lower than that of Glasgow. Yet if this might be said to hint at the possibility that the more militant areas refused fewer applications, then the record of Birmingham, not notably a troubled district, despite very occasional eruptions,<sup>65</sup> seems to controvert the analysis (Tables 9.9 and 9.10). For its low refusal rate of 24.8% contrasts sharply with the other five districts and with the national average of 43%. Perhaps, it might be suggested, this was due to the leniency of its chairman, Professor Frank Tillyard, who, as briefly mentioned in chapter six, was singled out by the Ministry of Munitions as the only other chairman, along with the Glasgow trio, who was causing concern to the officials. Yet Tillyard was also, until about July 1916, chairman of the Coventry

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<sup>62</sup>Ibid., pp 173, 245, 293.

<sup>63</sup>LAB 2/52/MT135/1, Lismer to Ministry of Munitions, April 18, 1917.

<sup>64</sup>Ibid., Keenlyside to Wolff, May 4, 1917.

<sup>65</sup>Cf., E.S. Turner, Dear Old Blighty, op.cit., p.156 concerning the incident involving 235 navvies summoned for being absent from work on December 28, 1916.



tribunal,<sup>66</sup> during which time, he refused significantly more applications than he did in Birmingham and allowed far fewer, as we see in Tables 9.17 and 9.18. Indeed, not only did his generous track record in Birmingham apparently pass without comment among local employers, but his tougher approach in Coventry, at least on paper, earned him, as we shall see below, the criticism of a number of firms in the latter city.

Table 9.17    Tillyard's Record of Leaving Certificate Cases

	Granted (1)	Refused (2)	Withdrawn (3)	Unnecessary (4)	Total (5)
Birmingham, Jan 1916- Oct 1917	1571	1375	2326	319	5591
Coventry, Jan 1916- end June 1916	85	153	120	24	382
National	4007	6528	3901	774	15210

Table 9.18    Tillyard's Record of Leaving Certificate Cases: Percentages

	Granted (1)	Refused (2)	Withdrawn (3)	Unnecessary (4)	Total (5)
Birmingham, Jan 1916- Oct 1917	28.1%	24.6%	41.6%	5.7%	100%
Coventry, Jan 1916- end June 1916	22.3%	40.1%	31.4%	6.3%	100%
National	26.3%	43%	25.6%	5.1%	100%

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<sup>66</sup> As well as chairman of the Hereford tribunal, The administrative problem was Tillyard's overloaded case lists. When he first raised the difficulty with the Ministry of Munitions, their original idea was either to shunt him off to Hereford or require him to give up the Birmingham tribunal. A later proposal was to remove him altogether from the tribunal lists, but this was dropped when the Board of Trade sang his praises as a chairman of three courts of referees. Finally it was resolved to confine him to Birmingham where he lived. See LAB2/53/MT144/1, "Birmingham Local Munitions Tribunal, Constitution File."

Moreover, if we compare, in Tables 9.19 and 9.20, the Coventry returns both during and after Tillyard's period as chairman, we find virtually no difference in the proportions of refusals to grants. Thus dropping the pilot had no perceptible effect on the aggregate outcome of leaving certificate proceedings in Coventry. Indeed, this result may well have disappointed the ministry since, as G.M. Hodgson, one of the Labour Regulation Department officials,<sup>67</sup> noted in June 1916,<sup>68</sup>

Table 9.19 Coventry Leaving Certificate Cases

	Granted (1)	Refused (2)	Withdrawn (3)	Unnecessary (4)	Total (5)
Jan 1916- Oct 1917	394	662	504	39	1599
Jan 1916- end June 1916	85	153	120	24	382
July 1916- October 1917	309	509	384	15	1217

Table 9.20 Coventry Leaving Certificate Cases: Percentages

	Granted (1)	Refused (2)	Withdrawn (3)	Unnecessary (4)	Total (5)
Jan 1916- Oct 1917	24.6%	41.4%	31.5%	2.4%	100%
Jan 1916- end June 1916	22.3%	40.1%	31.4%	6.3%	100%
July 1916- October 1917	25.4%	41.8%	31.6%	1.2%	100%

"It will not be altogether a disadvantage if Mr. Tillyard retains Birmingham and gives up Coventry and Hereford. I understand from Mr. Larke<sup>69</sup> that the cycle and motor firms at Coventry are particularly dissatisfied with his decisions...."

<sup>67</sup>Hodgson was later attached to the War Cabinet and became Secretary to the Commission on Industrial Unrest. See Glasgow Herald, June 16, 1917.  
<sup>68</sup>LAB 2/53/MT144/1, op.cit., Memorandum by G.M. Hodgson, June 7, 1916.  
<sup>69</sup>For Larke, see chapter one (supra).



Statistically, therefore, Tillyard's successor, a senior barrister, Evelyn Carmichael,<sup>70</sup> was as likely to offend the same important companies.<sup>71</sup>

Thus, if, at every twist and turn, the statistical returns do not conform to any consistent pattern suggested by our initial working hypothesis; if indeed, the opposite hypothesis, that militancy inspired tribunals to implement a harsher regime is just as questionable, then one is compelled to fall back on vaguer, more generalised interpretations which come close to being non-explanations. Thus the variability of judicial discretion and its autonomy from social and economic factors, the random distribution of the types of cases heard by the tribunals, the individual characteristics of the employer in question, let alone the district, the differing composition of the panel from day to day,<sup>72</sup> might all be relevant. Take, for example, the factors mentioned by Sir William Clegg in a letter to the Ministry of Munitions.<sup>73</sup> If the applicant was employed in a controlled establishment, explained the chairman, he would ask the employer if the men were entirely or mainly on munitions work and if they were indispensable; in which case, a certificate would obviously be refused. Only if the applicant were not engaged on work in a controlled establishment would Clegg examine the level of wages and conditions of work

<sup>70</sup> Carmichael's appointment disappointed Tillyard's deputy, Pritchett, who was hoping to land the job. Apparently, however, it was not a deliberate snub but a result of the ministry's being unaware that Tillyard had a deputy. For the latter was "kept ...so much in the background that Hodgson was not aware Tillyard had one". See LAB2/53/MT144/1. Memorandum by Wolff, June 14, 1916.

<sup>71</sup> No further details of Tillyard's controversial decisions are currently available. The Coventry local press would probably be the most obvious source, as well as the records of the local engineering employers' association.

<sup>72</sup> The Liverpool chairman, C.W. Surridge, told the Ministry of Munitions that he had succeeded in maintaining a continuity of policy at each sitting by "tactful conference" with the (constantly changing) assessors.

<sup>73</sup> See MUN5/353/349/1, op.cit., Memorandum by C.V. Butler, August 22, 1917. LAB 2/52/MT135/1, Clegg to Ministry of Munitions, December 6, 1915.

to determine whether the standard rate was being paid. If so, and if he was satisfied that working conditions were adequate, he would also refuse a certificate. Otherwise, the applicant would have his release. Yet as we have seen, this robust attitude, expressed by the Sheffield chairman, nonetheless resulted, in statistical terms, in the exercise of judicial discretion notably more generous than that in other comparable cities.

Thus, as the Official History of the Ministry of Munitions has concluded,<sup>74</sup> whenever there were raised before the tribunals,

"...not only difficult questions of interpretation, but questions no less difficult concerning the relative claims of public expediency and private hardship, the genuineness of pleas of ill-health and family obligation, and the extent to which the Act overrode trade customs and rights ... there was, naturally, some diversity of practice, some tribunals inclining to support the employer whenever he urged that a man was indispensable, others being more affected by cases of individual hardship."

Therefore, so long as tribunals exercised their discretion over leaving certificate applications loosely in line with bureaucratic objectives, while keeping a tight legal rein on strikes and Ordering of Work offences; while, moreover, they refrained from hawking their consciences, or flaunting their professed judicial autonomy in order to carve out, or to point the way towards, a new policy framework, as was briefly attempted in Glasgow, then statistical variations between districts, though presumably not unexpected by the Ministry of Munitions (given the statutory wording of section seven), would herald little cause for departmental concern.

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<sup>74</sup>OHMM, Vol. IV, Part II, p.20.



II: 1916-1917

Introduction

Perhaps one of the more intriguing features surrounding the administration of the leaving certificate scheme was the decision taken, around May 1917, to abolish it. The scheme was, of course, shortly thereafter, extensively cited in the reports of the Commission on Industrial Unrest (henceforth CIU) as an aggravating factor behind the then current wave of protest. Yet it had apparently weathered the barrage of Labour abuse heaped upon it during its first six months, when the clumsy opportunism of a number of employers almost sabotaged the scheme in its infancy. But once the storm surrounding the scheme had abated after January 1916,<sup>75</sup> it might have been thought that it would have settled into a routine which attracted less critical attention from the labour movement than previously. Therefore, what features of its enforcement, in the 18 months following the passing of the Amendment Act of early 1916, became significant in explaining its ultimate abolition? Was it the alleged intolerable disciplinary impact of the scheme, or the unrelenting denial of freedom of movement, especially in the case of the large numbers working away from home? Was it the deflationary effect of the scheme and its iniquitous effect on skilled time-workers, whose earnings were being outstripped by those of less skilled workers employed on automatic machines?<sup>76</sup> Needless to say, all these factors were important to a greater or less extent in the final reckoning, and must, of course, be located in the wider context of 1917 in which,<sup>77</sup>

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<sup>75</sup>Wolfe, op.cit., p.227.

<sup>76</sup>Ibid., p.231.

<sup>77</sup>Wrigley, op.cit., p.182. Cf., the sentiments expressed in the New Statesman article, "The Temper of the Workshop", New Statesman, June 9, 1917, at p. 221.

"Long hours, changing workshop conditions, restricted industrial relations under the Munitions of War Act, high prices, food scarcity, growing war weariness, scepticism as to war aims, the widening influence of conscription, and popular democratic feelings released by the revolutions in Russia, all combined to make Labour uneasy in this year."

Perhaps William Pringle, speaking in Parliament in April 1917, got to the heart of the matter when he observed that,<sup>78</sup>

"The very fact that men need to go all through this machinery and all this legal process for the simple purpose of attaining a change of employment is felt by them in itself to be a grievance and a hardship, and matters of grievance with their existing employers which ordinarily would be regarded by them as negligible, very often swell in importance largely owing to the fact that they know they cannot change their employment."

Indeed, as Humbert Wolfe explained,<sup>79</sup>

"It was not... that workers wished to move: they wished to be able to move, which was quite a different thing."

Of course, there were more immediate explanations for the abolition of the scheme, such as Addison's negotiating blunder in pledging its repeal without receiving in return from the trade unions a watertight commitment to dilution on private work. Moreover, the employers' resigned acceptance of abolition in preference to further tinkering with the scheme no doubt hastened its demise.<sup>80</sup>

But again and again, the argument was repeated through official sources that,<sup>81</sup>

"...the principal grievance, apart from the central question of the extension of dilution, was the restriction which the leaving certificate system imposed on the workers' freedom of movement."

<sup>78</sup> H.C. Deb., 5th Series, Vol. 92, col. 2764, April 27, 1917.

<sup>79</sup> Wolfe, op.cit., pp 228-9. Cf., William Mosses' view that "The impending abolition of clearance certificates will undoubtedly have a mollifying effect ... even if they [munitions workers] have no particular wish to change their shop or migrate to other districts." See Glasgow Herald, October 1, 1917.

<sup>80</sup> For these features, see OHMM, Vol. VI, Part II-III, pp.2-4.

<sup>81</sup> Ibid., p.2.



Indeed, as Kellaway, the Parliamentary Secretary, had pointed out to his own departmental critics, the objections to repeal were,<sup>82</sup>

"... far outweighed by the advantages derived from the disappearance of a restriction which had irritated labour more than anything else."

Moreover, had not the regional reports of the CIU uniformly condemned the leaving certificate scheme as one of the chief grievances contributing to the atmosphere of distrust in the labour world?<sup>83</sup>

But what exactly is the evidence that the scheme continued to operate oppressively after the reforms of the 1916 Act? For the Official History's somewhat anodyne account of the repeal of the scheme, like much of the relevant parliamentary debates and the obligatory succession of conferences with trade union delegates and employers' association representatives, (upon which the ministry's history is based) fails to penetrate very deeply into the substance behind the ritual complaints.

Indeed, the Official History itself might well be taken to have accepted conventional wisdom with a pinch of salt when it reminded its audience that, given the discouraging state of working class morale,<sup>84</sup>

"Men in such a mood distorted out of all proportion the grievances which arose from the administration of the Munitions of War and the Military Service Acts, especially where large workshops and trade union organisation made meetings frequent and isolated the munition workers from the rest of the community".

Yet hard, stubborn evidence, comparable to that presented to the Balfour-Macassey Commission in 1915, was available for discovery among the rhetoric. Consider, for example, in respect to the leaving

<sup>82</sup>Ibid., Vol. V, Part I, p.53.

<sup>83</sup>Ibid., p.47; ibid.; Vol. VI, Part II-III, p.5; W.C. Heron, "The Commission of Enquiry into Industrial Unrest of 1917", op.cit., pp 108-9.

<sup>84</sup>OHMM, Vol. VI, Part I, p.92.

certificate scheme, the amendment moved by William Pringle in April 1917 during the Second Reading of the ultimately abortive dilution bill. Thus he supported his proposal that,<sup>85</sup>

"... this House declines to proceed with the Second Reading of the Bill until the restrictions upon the freedom of employment of munition workers are removed",

by asserting that section seven had "destroyed all harmony between employers and workmen" and that dissatisfaction, "sometimes breaking out into open revolt",<sup>86</sup> had been expressed whenever the tribunal refused leaving certificates. Moreover, his colleague, W.C. Anderson, in seconding the amendment, insisted that,<sup>87</sup>

"The policy of coercion was not a good policy. If he were to read some of the cases tried by Munitions Courts, the House would perhaps understand why there was an undercurrent of bad feeling on the Clyde and on the Tyne, in Barrow, Sheffield and Coventry."

Thus he read out a newspaper report from Coventry listing in detail those women prosecuted for bad timekeeping, some of whom were obviously suffering period pains which they were too embarrassed to disclose to the tribunal.<sup>88</sup> However, the most dramatic and moving example, from the Birmingham tribunal, concerned a woman prosecuted for bad timekeeping, whose lateness, it transpired, was caused by her looking after her sick baby which subsequently died.<sup>89</sup>

Of course, such cases were abominable and ought never to have been brought, and of course the Birmingham case had nothing whatever to do with the issue at hand, the operation of the leaving certificate scheme, which was at the root of Pringle's original amendment. But it is doubtful whether it mattered that specific examples purporting to

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<sup>85</sup>Ibid., p.58.

<sup>86</sup>Ibid.

<sup>87</sup>Ibid., p.59.

<sup>88</sup>H.C. Deb., 5th Series, Vol. 92, col. 2770, April 27, 1917.

<sup>89</sup>Ibid., col. 2773.



illustrate the harsh and unconscionable working of the leaving certificate scheme (as distinct from the operation of the Ordering of Work Regulations) were not presented. Anderson did, however, accuse Sir William Clegg, chairman of the Sheffield tribunal, of refusing to grant certificates to applicants who had voluntarily left their employer and who had then served six weeks unemployment as a result. For Clegg, according to Anderson, had not made clear that leaving certificates were no longer necessary after the expiry of this period.<sup>90</sup> The probable truth is, however, that Clegg was well aware of the refusal of an employer to hire any worker without a certificate, no matter for how long the latter had been unemployed. If so, then Clegg was clearly exercising his discretion in a vindictive and obstructive manner in order, according to William Pringle, in a debate a month earlier, "to compel men to stay in their present occupations."<sup>91</sup> Thus the Sheffield allegations may well explain the demand by 10,000 engineering workers in the district for the removal of Clegg from office, an incident to which reference has already been made. But the grievance also explains the proposed amendment which required tribunals, rather than simply entitled them, to grant certificates after six weeks unemployment.

It may even be the case, as the table below suggests, that Clegg responded positively to the complaints levelled against him, by reducing the average weekly number of such exceptional and controversial decisions from the high point of 1916. But if the figures do relate to such cases, then the trend was discernable even before the demonstration in March 1917, and the protest may only have accelerated its pace.

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<sup>90</sup>Ibid., col. 2765. Anderson referred to the case of one man without a certificate after six weeks who had been refused employment by 23 different employers.

<sup>91</sup>Ibid., col. 398-9, March 28, 1917.

Table 9.21     Sheffield Tribunal Returns of 'Unnecessary' Leaving  
Certificate Applications

Period	Number of Weeks	Total Number of Unnecessary Applications	Average per Week
Jan 8, 1916- Jun 24, 1916	25	37	1.9
July 1, 1916- Dec 30, 1916	27	140	5.2
Jan 6, 1917- March 31, 1917	13	41	3.2
April 7, 1917- June 30, 1917	13	33	2.5
July 7, 1917- Oct 20, 1917	16	30	1.9

In any case, not only does the next table suggest that applicants had more cause for complaint in Glasgow than in Sheffield. But it was, for a short time, the practice of the Glasgow tribunal (until Lord Dewar,

Table 9.22     Glasgow Tribunal Returns of 'Unnecessary' Leaving  
Certificate Applications

Period	Number of Weeks	Total Number of Unnecessary Applications	Average per Week
Jan 8, 1916- June 24, 1916	25	100	4.0
July 1, 1916- Dec 20, 1916	27	149	5.5
Jan 6, 1917- March 31, 1917	13	139	10.7
April 7, 1917- June 30, 1917	13	138	10.6
July 7, 1917- Oct 20, 1917	16	184	11.5



in the Appeal Court, expressed his disapproval) to refuse to entertain a leaving certificate application from any workmen who had voluntarily left his employer. For, said Sheriff Fyfe,<sup>92</sup>

"If this rule were not rigidly enforced, men would be continually leaving their work, which is the very thing the Munitions Acts are designed to prevent."

Indeed, even the Boilermakers' Society official, William Mackie, agreed that the practice of men quitting their work without permission was "very reprehensible", and that employers ought to report such employees for having committed an offence under the Acts. Nonetheless, Lord Dewar directed that the tribunal ought to hear the application, though the applicant's conduct was likely to be a material factor in determining whether or not it should be granted.<sup>93</sup>

Arising from the foregoing, therefore, we may conclude, first, that widespread criticism of the scheme after January 1916 was reported by trade union officials to government departments and committees, whether in the course of delegations to the Ministry of Munitions or during the information-gathering exercises of the CIU. Second, much parliamentary attention was focussed on the case of the Sheffield tribunal under Clegg. Yet it is not at all clear that Clegg was typical in this respect and that one is justified in inferring from his conduct a broader indictment of tribunal administration of the

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<sup>92</sup>Smith v. Dennytown Forge Co. Ltd. 1916 SMAR 13-15, at p.14, July 26, 1916.

<sup>93</sup>Ibid., pp 13-15; Glasgow Herald, July 18, 1916; LAB2/63/MT167/6. The applicant was a ship plater who had been refused a leaving certificate by his employer for whom he had been working as a labourer. He left his employer to resume skilled work at his own trade. It should, however, be noted that the tables of 'unnecessary' applications do not distinguish between those cases where the applicant had already undergone a six week period of unemployment and those cases where his previous employer was not engaged on munitions work. Nonetheless, in the case of the latter, the refusal to grant a certificate would be just as damaging to the applicant. Cf., AIMS, Monthly Report, November 1916, p.196 which advised members moving from non-munitions to munitions work to ensure they obtained a certificate from their former employer.

scheme. For despite the hackneyed quality of the phrase, there remains a strong element of truth in the proposition that "hard cases make bad law". Even so, as the Official History pointed out in respect to the poignant Birmingham timekeeping example cited earlier (but which is also pertinent in the light of Clegg's judicial practice),<sup>94</sup>

"...the sequel [i.e. abolition of the scheme] is hardly intelligible unless cases as this are borne in mind. No doubt the hardships consequent upon the Munitions of War Act were exceptional and trivial compared with the suffering caused by military service. But they were frequent enough to inflame the temper of large bodies of workpeople; and unless a policy of coercion, however mild, can reduce the misuse of coercive powers to negligible proportions, it risks losing all its gains, and far more, in a single upheaval."

Thus if it is the case that Clegg's regime was unique in its unremitting, as distinct from occasional, harshness (and the evidence for this is contradictory)<sup>95</sup>, then it may be argued that he did more to discredit and destroy the scheme, by virtue of the parliamentary publicity given to his conduct, than did Fyfe, who tempered severity with caution, or did the well-intentioned Glasgow trio whose errors on the side of leniency were scarcely grounds for an orgy of lapidation on the part of trade unionists.

#### Glasgow Hearings, 1916-1917

We have seen from the statistics presented in this chapter, that the broad trend of decision-making in Glasgow was maintained throughout the whole period of existence of the leaving certificate scheme. Thus, while more certificates were refused than were granted,

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<sup>94</sup>OHMM, Vol. VI, Part I, p. 59, note 2.

<sup>95</sup>Thus the Sheffield agitation against the tribunal may well tell us more about the local<sup>labour</sup> movement than about the tribunal itself.



nonetheless, the combined total of grants, withdrawals and "unnecessary" claims far outweighed the total number of refusals. Yet a sensitive tribunal administration of the scheme could still give rise to a succession of decisions which emphasised workers' loss of freedom of movement and their subjection to intensified factory discipline, and which illuminated their accumulated manifold grievances surrounding wages questions. Thus in spite of the ambiguity which attached to the scheme, the above factors sounded its death knell; though it will be argued later that an additional element, the existence of compulsory military service, added a more threatening gloss to the system.

To illustrate the ambiguous quality of the Glasgow tribunal's adjudications, let us consider, for example, those leaving certificate claims which concerned matters of wages. While William Brodie, the ASE district delegate in Glasgow, was advising in April 1917 that,<sup>96</sup>

"Our members must understand that there is little use applying for a clearance certificate if their only claim is that they can get better wages elsewhere, as it is only wasting time to attempt it,"

the actual experience of proceedings underlined the possibilities which still remained available. Thus a failure to pay the standard district rate,<sup>97</sup> or a shift to "more important" munitions work,<sup>98</sup> which might, indeed, entail intra-class conflict between two employers, each asserting the strategic importance of their own (secret) work, generally entitled applicants to certificates. Thus a labourer who had, for ten years, been working a milling machine at 10<sup>1</sup>/<sub>4</sub>d per hour, was entitled to a certificate enabling him to take up munitions work at 11<sup>1</sup>/<sub>2</sub>d an

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<sup>96</sup> ASE, Monthly Journal and Report, April 1917, p.23.

<sup>97</sup> Glasgow Herald, May 10, 1916: ex-Territorial woodcutting machinist; ibid., February 12, 1917: non-union blacksmith. The discrepancy led to the enactment of section 5 of the 1917 Act, respecting the extension of recognised terms to non-federated shops. A similar provision was retained in a succession of statutes until repealed by the Conservative government in the Employment Act 1980, s.19.

<sup>98</sup> Glasgow Herald, January 27, 1917. Cf., ibid., July 29, 1916; Colin Smith v. Penman & Co. Ltd., LAB2/63/MT167/6; Glasgow Herald, May 30, 1917: draughtsman on Class A work in uncontrolled establishment, earning £1 per week. offered £1.15/7 in a controlled shop.

hour.<sup>99</sup> Moreover, on the extremely rare occasions when the dilution scheme or proposals were expressly cited in support of applications to move, the claims usually succeeded. Thus the employment of a skilled fitter, John Fairland, on unskilled work, assembling parts for machinery at Weir's of Cathcart, prompted William Kerr, the ASE delegate, to point out to the tribunal in February 1916, that there were proposals afoot for the dilution of labour. A certificate was accordingly granted.<sup>100</sup> In the only other leaving certificate case discovered, where the dilution scheme was invoked in evidence, a plater had been transferred by his employer to riveting work, which resulted in a loss of earnings for the applicant. In consequence, W.G. Sharp had to remind the tribunal that the dilution scheme entailed the upgrading, not the downgrading, of skilled labour.<sup>101</sup>

Yet the fact that, as disclosed in another case, a skilled ironworker, John McGillivray, was undertaking unskilled work as a carter did not, according to Lord Dewar, automatically entitle the applicant to a leaving certificate if an offer of skilled employment elsewhere was made to him.<sup>102</sup> No doubt the "national interest" might,

<sup>99</sup> Glasgow Herald, November 30, 1916. Cf., the differing views on the nature of skill between Sheriff Fyfe and the employer in the case, which reflects in part the "economic" and "sociological" explanations, respectively, identified in Charles More, Skill and the English Working Class, 1870-1914 (London: Croom Helm, 1980). It seems probable that the local engineering employers' association authorised the lodging of an appeal in this case on the ground that it implied that the tribunal could establish appropriate rates of wages. The decision of the tribunal was, however, upheld. See NWETEA, Minute Book No. 8, Jan. 22, 1917.

<sup>100</sup> Glasgow Herald, Feb. 3, 1916. Cf., the application of an electrician at Glasgow Corporation Tramways Department, to transfer to a shipyard. As a dilution scheme at the department was under consideration by the Clyde Commissioners, the leaving certificate application was thought by the tribunal to be premature. See ibid., June 7, 1916.

<sup>101</sup> Ibid., July 29, 1916.

<sup>102</sup> Cf. Scottish Tube Co. Ltd. v. McGillivray, 1916 SMAR 16-19, July 26, 1916.



in particular circumstances, be better served by requiring the applicant to remain where he was. But apart from contradicting Sheriff Fyfe's statement at the local tribunal, the ruling must also have appeared to bewildered trade unionists to run counter to the incessant government campaigning for savage economy in the deployment of skills. Thus while, for example, the grant of a leaving certificate to a Clydeside by-turn puddler to enable him to take up regular work elsewhere would meet trade unionists' expectations,<sup>103</sup> the apparently iconoclastic nature of the guideline in McGillivray's case could only deepen trade union distrust for the scheme.

Indeed, the feeling that the scheme was still being exploited by Clydeside employers for their own private gains long after the traumas of 1915 had led to the 1916 Amendment Act, continued to express itself before the Glasgow tribunal. For example, a shipyard riveter who had been engaged in government work for two years was transferred to a merchant vessel at less favourable piece rates,<sup>104</sup> and when his request to return to munitions work was refused, he applied for a leaving certificate. The fact was, his trade union representative told the tribunal, that as long as there was urgent government work available elsewhere on the Clyde,

"... the men were not prepared to give their services to help the profits of the 500 per cent patriots."

More damaging assertions were levelled by three engineers who alleged that their employer was using munitions workers "for the purpose of manufacturing stock to store and preserve for the coming of peace and then, [Sheriff Fyfe] presumed the suggestion to be, used

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<sup>103</sup> Scottish Iron & Steel Co. v. Hands 1916 SMAR pp 1-4 April 19, 1916; Scottish Law Review, Vol. 32, July 1916, pp 150-1; Glasgow Herald, April 20, 1916.

<sup>104</sup> Ibid., July 18, 1916.

for the private emolument of the firm".<sup>105</sup> Fyfe was of course astute enough to recognise the effect on public opinion of such revelations. For if substantiated, they might have serious effects on morale in the factories and shipyards, already in some danger of flagging after the Somme massacres, and as the war dragged on remorselessly. The seriousness of the allegations, insisted Fyfe, therefore merited stronger evidence than was otherwise acceptable before a tribunal, and hearsay evidence, especially when contradicted by the management, was clearly inadequate.<sup>106</sup> Indeed, as he declared in another case, where it was alleged that the employer was hoarding labour unnecessarily,<sup>107</sup>

"... the majority of these statements were the irresponsible expressions of workmen who had no idea as to the actual contracts upon which their employers were engaged. The statement that controlled firms were not fully engaged was likely to create a wrong impression ... As matters stood, however, many of the workmen seemed inclined to take upon themselves the responsibility of saying what was and what was not important work."

But, of course, as some writers have recently argued, the trend to war collectivism was leading trade unionists to question their role in the state apparatus; indeed to question the role of the state itself. Thus criticism directed against a cosy relationship between the state and the manufacturers where only the latter were privy to state secrets and where labour was purposefully excluded from such deliberations might even be reflected at the level of the individual firm.

There is no doubt, therefore, that some of the leaving certificate cases were helping to shape the views of munitions workers as to the

<sup>105</sup>Ibid., August 2, 1916.

<sup>106</sup> Lord Dewar's ruling in McGillivray's case, supra, that "It is clearly intended that the facts, in ordinary cases, should be ascertained informally, and the cases decided expeditiously" (op.cit., p.18) was thus consequently ignored.

<sup>107</sup>Glasgow Herald, November 15, 1916.



proper limits of managerial decision-making in a wartime economy informed to a significant degree with corporatist policy. For, under the impact of war, novel developments could be detected. Thus, according to the New Statesman,<sup>108</sup>

"The changing status of the wage-earner necessarily involves a further retirement, very gradually, and possibly even slowly, from the position of autocracy in the factory which the employer has inherited; and a further taking into council and even into partnership, of all the wage earners, so far as concerns the conditions of their working life."

Though fiercely antithetical to such a radical analysis, Sheriff Fyfe was, of course, prepared to announce at the tribunal that,<sup>109</sup>

"If any applicant was in a position to bring forward proof to establish his assertion that he was not being sufficiently employed and was being forced to stay with his firm, the Court would deal with the employer in an effective manner."

Thus not merely a crude instrument of labour control, one aspect of the leaving certificate case load represented an endeavour by munitions workers to limit the scope of managerial autonomy and to harness it to the broader corporatist interest. And it was this radical potential alongside the scheme's restrictive quality which seemed to alarm Sheriff Fyfe. Therefore, perhaps to frighten off further leaving certificate applications by trade unionists presuming to determine "what was and what was not important work" (supra), he reminded applicants that,<sup>110</sup>

"If employers could not find work for their men, it was obvious that many workmen who were at present engaged in starred occupations should be in the Army."

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<sup>108</sup>New Statesman, June 23, 1917, p.270.

<sup>109</sup>Glasgow Herald, November 15, 1916.

<sup>110</sup>Ibid.

### Leaving Certificates and Military Service

The trenches were, indeed, the truly awful nemesis awaiting those munitions workers falling into the category of unbadged labour. Thus for most starred workers, trade card holders or those designated in the schedule of protected occupations, the withdrawal of immunity from recruitment was, of course, the ultimate deterrent. We have, in fact, already referred to the relationship between military service and the Munitions Act, notably in respect to bad timekeepers threatened with call-up if they persistently lost time. Indeed it was alleged that Sir William Clegg, at the Sheffield Munitions tribunal, not only punished workmen who lost time, but also reported them to the military authorities. As W.C. Anderson told the Commons,<sup>111</sup>

"What power has the chairman of a munitions tribunal to report men to the military authorities,... If men have to be reported to the military authority, let it be done in a proper way. It is not the business of the Munitions Court to report them."

And, of course, the stories of harassment of exempted workers by the military, such as the Hargreaves case in Sheffield, are legion.<sup>112</sup>

However, with one exception, the significance of which is uncertain (see Appendix three where the complexities are unravelled) the interaction of leaving certificates and military service seems not to have been clearly observed by critics focusing both on leaving certificates and on military service as separate and distinct institutions of the wartime state.<sup>113</sup>

<sup>111</sup>H.C. Debates, 5th Series, Vol. 92, April 27, 1917, col. 2772.

<sup>112</sup>Cf., ASE, Monthly Journal and Report, September 1916, p.22; ibid., October 1916, p.16; ibid., November 1916, p.40.

<sup>113</sup>There are scattered references which link the two, but which do not explore the connections, e.g., Wolfe, op.cit., p.227; Report of the (McCardie) Committee on Labour Embargoes (December 1918), section 26. Cf., Lowe (1975) "The Demand for a Ministry of Labour etc" op.cit., p. 37, who states that the powers of the Ministry of Munitions "bordered on industrial conscription because no man could change jobs unless he had a leaving certificate stating the reasons for his leaving his previous employment; should a man leave without such a certificate, or be dismissed, he became immediately liable for military conscription". Both statements are, of course, inaccurate, as is the further footnote comment that, "The Ministry itself was not directly responsible for the issue of these certificates until the autumn of 1917." (ibid.)



Certainly, as an instrument of discipline among exempt workers, the threat of military service possessed no peers. As Philip Snowden argued,<sup>114</sup>

"From the first day of the operation of that measure [the Military Service Act] it became an instrument for industrial compulsion. Tribunals all over the country have used the Act for that purpose. Workmen who have been prominent in Trade Union matters have been debadged and sent into the Army, Employers of labour have used the Act to discriminate between workmen in regard to military service. Cases of this character might be quoted in large numbers. A notorious case of this sort happened in Dundee where workmen came out on strike and a number of them were seized by the military authorities and passed into the Army. Military Service Tribunals have imposed the condition that an exempted man, while following his usual civil employment, should only receive army pay and allowances. Men who have been given exemption on the condition that they engage in work of "national importance" are employed under penal conditions at sweated wages."

Indeed, as late as September 1918, a two-week strike of Clyde shipwrights was called off, almost certainly because the government resolved to draft into the army those strikers of military age who remained away from their work.<sup>115</sup> Of course, this particularly instructive example occurred long after the leaving certificate scheme had ended. But many instances of the threat of call-up, both within, as well as outwith the context of leaving certificate claims, occurred.

Thus, it was alleged in one case by William Westwood of the Shipwrights' Association that the general manager of Beardmore's at Dalmuir, Archibald Campbell, had withheld a leaving certificate from a

<sup>114</sup> Philip Snowden, Labour in Chains: The Peril of Industrial Conscription (January 1917) p.10. Fears that such developments would occur had been expressed in the debates on the first Military Service Bill of January 1916. See OHMM, Vol. IV, Part III, pp. 58-9.

<sup>115</sup> Glasgow Herald, October 1, 2, 1918. Lowe (1975) op.cit., p.81, refers to a Cabinet memorandum of October 1918 recommending the drafting of all Electrical Trades Union strikers in the event of industrial action materialising.

shipwright who had refused to attest.<sup>116</sup> In another case,<sup>117</sup> a young engineer was called up but was able to present his exemption certificate to the recruiting officer who promptly sent him back to his work. His employer, however, refused to restart him, telling him that "You are for the Army". As William Brodie pointed out to the tribunal, not only was this a case of an employer keeping a skilled man idle for three weeks, but it was also the "case of a manager forcing a young man into the Army". Indeed, as the ASE pointed out to Lord Hunter in the Appeal Tribunal, in a case involving an Edinburgh apprentice alleged to have been slacking,<sup>118</sup>

"It was becoming very common for employers to threaten men and apprentices with the Army as a spur, and the society took a serious view of these threats to skilled engineers."

Moreover, apart from the objective of punishing employees or of compelling them to modify their behaviour, there were even clear examples of employers relying on the threat of military service to grind down the level of wages. Thus in one case, heard in Glasgow, a machinist in a paper mill applied for a leaving certificate on the ground that his wages had been reduced by seven shillings. However, as the applicant's representative, Owen Coyle, pointed out, once the firm had obtained conditional exemption from military service on his behalf from the Lanarkshire tribunal, it immediately transferred the applicant to another department where his wages fell from £2.1/6d per week to £1.14/6d. Indeed, when he objected, he was told that the firm could now make him work for £1 a week. Thus, denying that the

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<sup>116</sup> Glasgow Herald, March 24, 1916. Cf., the case of a released soldier who had complained of working conditions at Weir's of Cathcart. He was due to be dismissed without a certificate for bad time-keeping on the date of the munitions tribunal hearing, and feared a court-martial if no leaving certificate were forthcoming..

See ibid., February 15, 1916.

<sup>117</sup> Ibid., April 2, 1917.

<sup>118</sup> Glasgow Herald, July 26, 1917.



evasion of military service was the applicant's intention,<sup>119</sup>

"He (Mr Coyle) had come to the conclusion that the firm had used the conditional exemption they obtained for these men to try to keep them under fear of military service, and to make them work for less wages".

There was in fact very little prospect of using the leaving certificate scheme in order to evade military service. Take for instance, the case of a plumber of military age employed by Glasgow Corporation Tramways Department, and who had now been offered employment in a shipyard. He explained to Sheriff Fyfe that he had been in the department for a lengthy period and had previously refused out of loyalty to the department to undertake munitions work. He was shortly due to appear before the military tribunal. Therefore, if the department desired to retain him, they ought to obtain exemption for him from military service. If, however, he was not indispensable enough to merit military exemption, then he ought to receive a leaving certificate to join the shipyard (which no doubt would be happy to apply to the military tribunal on his behalf). His ingenious suggestion, however, received short shrift from the chairman.<sup>120</sup>

"We cannot", Sheriff Fyfe announced (to all the world, metaphorically speaking), "give anybody an opportunity to get a badge for his coat to use at the tribunal. We are not going to interfere with the military tribunal. They are evidently dealing with you. The application is refused".

Thus for leaving certificate applicants desirous of avoiding military service (and some who were exempt in their existing employment were prepared to take their chances of losing their exemption by

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<sup>119</sup>Ibid., September 6, 1916.

<sup>120</sup>Ibid., October 18, 1916.

obtaining employment elsewhere),<sup>121</sup> there was a bleak future in prospect where the munitions tribunal refused to be drawn on the matter. For if the employer refused a certificate on the ground that his employee was an essential part of his workforce, then it might have been expected that the former would appeal to the military tribunal on behalf of the employee for at least conditional exemption. But in fact there were a number of instances where the employer not only refused leaving certificates, but also refused to apply to the military tribunal to exempt their employees from call-up.<sup>122</sup> Thus in the case of the North-Eastern Railway, the Yorkshire delegate of the ASE reported that,<sup>123</sup>

"The company has definitely declined to release these men to get work elsewhere but were quite prepared to let them go into the Army in spite of all the cry there is for munitions and suspensions of holidays to make the same".

In another case, the West Country delegate of the union reported that,<sup>124</sup>

"... 200 stars were removed by one employer at the same time he was refusing leaving certificates to some of the same men."

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<sup>121</sup>Ibid., October 27, 1916. As Sheriff Fyfe told the applicant, "Don't you think you will be between the devil and the deep sea?" Indeed, there were even more bizarre outcomes. Thus the Midlands ASE organiser reported in May 1916 that over the previous 12 months, a number of young ASE members, anxious to enlist in units where their skills could be of assistance, had been thwarted by their employers. "In one particular case", he wrote, "an uncontrolled firm applied for exemption for several of our members - without their knowledge - to a local military service tribunal, which contrary to the instructions officially issued, refused exemption. The firm are on work which they state is munition work, but in view of the above decision, I applied for certificates from the local munitions tribunal. This body refused the certificates on the grounds that the men were engaged on important munition work. The position thus is that mechanics are refused exemption from military service because it is no longer necessary in the national interests that they shall continue in their usual occupation and are refused certificates of release because they are engaged on munition work of urgent national importance. This is only one of the silly results of the shifting policy of the authorities with which I am coming in contact in one capacity or another every day, and which tends to make one tired of trying to understand." See ASE, Monthly Journal and Report, May 1916, p.37.

<sup>122</sup>Ibid., July 1916, p.34.

<sup>123</sup>Ibid., June 1916, p. 30.

<sup>124</sup>Ibid., February 1916, p.42.



Even Sheriff MacDiarmid, chairing the Dunbartonshire East military tribunal, felt sympathy with employees debadged under the Military Service Act passed in May 1916 and who were in consequence apparently abandoned by particular employers to the horrors of the trenches. Thus during one exemption hearing, he remarked,<sup>125</sup>

"I think it is very bad luck that this man should have to go in those circumstances. I cannot understand those debadged men at all. Singer's people never seem to make any enquiry into personal cases. I think the applicant should go to Beardmore's and try to get munition work."

It was therefore clear that not only could employers manipulate the leaving certificate scheme to their advantage in respect to employment matters pertaining to discipline or to earnings. They also possessed, albeit indirectly, the power of life or death over their workforce where they (and indeed the munitions tribunal) chose silence.

Thus whereas the munitions tribunals continued to adjudicate on leaving certificate applications on such familiar grounds as failure to pay standard rates; the time-workers' grievance; ill-health; the maintenance of two homes; changes in working arrangements; and promotion or transfer to "more important" work, the added ingredient of military service, in the words of an ASE official,<sup>126</sup>

"appears to have undermined the small amount of mobility left to Labour under the Munitions Acts 1915 and 1916."

Thus it was not difficult for Labour critics to view, whether accurately or not, this additional and, indeed, more deadly compulsion on munitions workers to resign themselves to their existing employments as the embodiment of industrial conscription. Hitherto, the Munitions Act, with its provisions for workshop regulations and its "irritating"<sup>127</sup>

<sup>125</sup> Glasgow Herald, June 26, 1916.

<sup>126</sup> ASE, Monthly Journal and Report, June 1916, p.34.

<sup>127</sup> The description "irritating" was frequently used to depict the limited effect of the scheme.

scheme of leaving certificates, was only dimly perceived in this light and then only as a glint in the eye of the Minister of Munitions.<sup>128</sup> Now, however, the interaction of the two coercive measures appeared to transform nightmare into reality.

Thus if we are searching for the causal factors which explain the demise of the leaving certificate, it is not enough to reiterate the complaints of 1915 relating to discipline, freedom of movement, wage restraint and the absence of reciprocity enabling the employer to dismiss at will, and the employee to leave only under six weeks' penalty; nor enough to accept that the scheme, like the workforce it was intended to regulate, had exhausted itself; nor sufficient, even, that the government's drastic offer of repeal was the indispensable price of dilution on private work. The further dimension was, simply, that as the Labour MP, Stephen Walsh, explained to Lloyd George in another context, "... a man must either be a civilian or a soldier".<sup>129</sup> By dovetailing the one scheme with the other, the government had fudged the distinction and was believed, more sharply than at any time since July 1915 when the first Munitions Act was passed, to have inaugurated a regime of industrial conscription. This was the political lesson which the leaving certificate scheme after 1916 instilled, and cannot be neglected despite the apparent primacy of economic grievances which the scheme fostered and perpetuated.

Thus the New Statesman,<sup>130</sup> as so often in the past, the most reliable pulse of working class sentiment, observed in July 1917, that in respect to military service, labour unrest was due, not so much to the,

<sup>128</sup> Most notably in his famous (or infamous) Manchester speech in June 1915.

<sup>129</sup> Glasgow Herald, August 28, 1916.

<sup>130</sup> New Statesman, July 28, 1917, p.389.



"... manifold unfairness and inequalities incident to the successive changes of policy of the Army Council, the inconsiderate and even brutal arrangements for medical re-examination and the occasional failure of the recruiting officers to carry out their instructions, as the belief which the Government has created that the military authorities, either wilfully or negligently, play into the hands of the employer who wishes to get rid of the more "troublesome" workers, and to choose as "indispensable", those who are "docile".<sup>131</sup>

Thus favouritism was rife while,

"... men who have "stood up for their rights" (and those of their class) have been "sent to the trenches" or even overtly threatened by the foreman that if they were not docile, they would be so sent. This is what the workmen call Industrial Compulsion, against which they threaten a universal strike."<sup>132</sup>

Indeed, whereas the regional reports of the Commission on Industrial Unrest, while attesting to the overwhelming loyalty and patriotism of British workers, could do no other than confirm in extenso the prevalence of such beliefs,<sup>133</sup> the evidence concerning leaving certificates presented by the Associated Ironmoulders of Scotland to the Scottish Commission underlined the,

"... uncertainty of men of military age as to their position when an employer, on account of a difference that has arisen, or from any cause - imaginary or otherwise - threatens to discharge a workman and report him to the Military authorities, when he is left in doubt whether he will be called up before he is enabled to start elsewhere."<sup>134</sup>

The government could, of course, issue a further "definite pledge against the introduction of industrial compulsion",<sup>135</sup> as did Neville

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

<sup>133</sup> Heron, op.cit., pp 109-11, citing West Midlands report, p.5; London and South East, p.3; Yorkshire and East Midlands, p.4; North East, p.6; North West, p.24; Wales, pp 36-7; Scotland, p.9.

<sup>134</sup> AIMS, Monthly Report, July 1917, p.128.

<sup>135</sup> Labour Gazette, October 1917, p. 355; Glasgow Herald, October 15, 1917.

Chamberlain, the Minister of National Service, after the publication of the Commission on Industrial Unrest reports. But the government was simply no longer trusted; its "solemn pledges," in the words of George Barnes' summary report of the Commission findings, had been broken time and again; and its lack of good faith in allowing employers to manipulate the military service scheme to their own advantage, as it had done with the leaving certificate scheme, had been shamefully illuminated (even if evidence of conspiracy was lacking).

In any case, who was likely to believe Chamberlain when three weeks earlier, Robert Young, the general-secretary of the ASE, had argued that "industrial conscription in agreed form [had been] permitted" by the trade unions?<sup>136</sup> Here was yet another "scrap of paper" emanating from a government reluctant to conscript riches. Thus, as the New Statesman argued in 1918,<sup>137</sup>

"If industrial conscription has to come, they [British workmen] will serve, as they do in the Army and Navy, no-one but the State. They resolutely refuse to be, as they say, enslaved, so long as the private employer is not also conscribed, put to work like an Army officer at a fixed salary, and compelled to cease making profits for his own benefit."

To the extent that the leaving certificate scheme, especially when intertwined with military service, had prevented the attainment of national service all round, in a pure and unadulterated form, and had prevented Labour from taking part "in the affairs of the community as partners rather than as servants",<sup>138</sup> then a further justification for its removal had been provided, even if that dimension had only been dimly perceived at the time.

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<sup>136</sup> Ibid., September 24, 1917.

<sup>137</sup> New Statesman, July 27, 1918, p.325.

<sup>138</sup> Summary Report of Commission on Industrial Unrest, recommendation 4.



### Conclusion

In analysing the experience of the leaving certificate scheme, there remains a tantalising paradox. For if indeed, as the New Statesman (supra) implied, working class opposition was rooted in its hostility, not to industrial conscription per se, but to the latter's perceived exploitation by private profiteers (which, also, significantly, was at the base of the difficulty over the lifting of restrictive practices), then might it not be the case that more, rather than less, corporatist direction in manpower allocation, perhaps akin to Essential Works Orders during the Second World War, would have been more acceptable to Labour? The evidence is, of course, confused. Certainly, as the Industrial Unrest commissioners indicated,<sup>139</sup> some animosity was directed against vague and unspecified "Government interference".<sup>140</sup> Additionally, criticism from other quarters was directed not against the profiteers, but against the system which permitted profiteering to flourish. Nonetheless, the opposition to military service and to military victory (and, indeed, to the 'servile state') was undoubtedly confined to a minority who cherished higher values than nationalism or xenophobia. In this light, therefore, the observations of the New Statesman (supra) may not have been as outlandish as the history of opposition to industrial conscription might have implied. In the case of the leaving certificate scheme itself, perhaps the flaw was that it lacked sufficient corporatist discipline by conferring too

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<sup>139</sup> Cf., also, Edwin Cannan, "Industrial Unrest", Economic Journal, Vol. 27, December 1917, at p.459.

<sup>140</sup> But cf., H.B. Butler, a leading Ministry of Labour official writing in early 1918: "The State is unpopular; everybody - employers and workers alike - are saying they do not want the State to act, they want the State to keep out and let them handle their own problems; but they are not handling their own problems. They are doing nothing - except abuse the State ... If no-one else acts, the State will, not because it wants to, but because someone must." Cited in Lowe (1975) op.cit., p.98.

much autonomy on employers who could initially withhold leaving certificates while at the same time, it enabled tribunal chairmen to exercise discretion as they saw fit. Thus in the case of tribunal chairmen such as Clegg, perhaps their conscious awareness of order and nationalism was not always consistently matched by an appreciation of the reciprocal nature of "unity". For this required state institutions to "bargain" with those components which went to make up the "nation at war", in order to secure their cooperation (perhaps even to avoid system contradiction), leading in turn to the coordination of the whole. And there was nothing to prevent an attenuated version of bargaining, what one might call "micro-bargaining", from being conducted on an individual level at the tribunal, enabling organized labour to evaluate the exercise as it prepared for the next bout of "macro"-bargained corporatism, as occurred in the case of the 1917 dilution and leaving certificate proposals.

Moreover, the initial autonomy conferred on employers whether to grant or to withhold leaving certificates, a freedom fiercely resented by Labour, could be constrained by requiring employers to seek the permission of the tribunal where they wished to retain staff desirous of moving. Yet this proposal, advanced in June 1915 by John Hodge, Labour MP for Manchester, Gorton,<sup>141</sup> was decisively rejected in April 1917 by John Hodge, Minister of Labour.<sup>142</sup> Thus the opportunity was lost of reducing the status of the employer vis-à-vis his own employees, to a suppliant of the state, more in accordance with the vision of the New Statesman to transform the employing classes into non-profit making, salaried public officials (with its hints of Fabian bureaucracy). Given such a proposed radical

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<sup>141</sup>OHMM, Vol. I, Part IV, p.41.

<sup>142</sup>Ibid., Vol. VI, Part I, p.58.



restructuring of the leaving certificate scheme, the incentive to move, on the part of munitions workers (except where reasons such as ill-health or the maintenance of two homes were adduced), might well have been diminished (as would the level of dissatisfaction). For in the event of tighter, and therefore more corporatist (but necessarily more sensitive), wage regulations designed to eliminate regional differentials which did not fairly reflect skill differentials, one of the paramount justifications for shifting employments would be ended.

But in the end, the employers' autonomy remained relatively undisturbed till the demise of the scheme, while the activities of a minority of tribunal chairmen, lacking the intelligence and vision to appreciate the effects of even a single "outrageous" decision on a truculent and distrustful labour force, ensured that hostility would not flag.<sup>143</sup>

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<sup>143</sup> For the lengthy negotiations over repeal involving the government, trade unions and employers together with the relevant parliamentary debates, see OHMM, Vol. V, Part I, pp 33-5, 45-6, 51-7; ibid., Vol. VI, Part I, pp 57-62; ibid., Parts II-III (combined), pp 1-9; also Wrigley (1976) op.cit., pp 202-4. As well as extending the WMV scheme in preparation for abolition, the government also inserted a number of statutory safeguards in the 1917 Act to prevent the expected widespread migration of workers. For example, section 1 of the Act dealt with the skilled time-workers' wage grievance; section 3 required a week's notice before leaving employment; and section 2 prohibited employers from recruiting workers for private work without the consent of the Minister. A new regulation, 41AA, enabled the military to call up any man unemployed for more than 14 days without reasonable cause, and of course regulation 8A(b) was dusted down in preparation for the imposition of embargoes on employers hiring a larger quota of skilled workers than the Ministry of Munitions considered justified, a prelude to the embargo troubles in the Midlands in July 1918. For these matters, see OHMM, Vol. VI, Parts II-III, pp 12-14, 61-71; Hinton, op.cit., pp 229-34; Wrigley, op.cit., pp 228-30; Report of the (McCardie) Committee on Embargoes, op.cit., passim; F.R.D. Monthly Circular, Vol. 3, August 1, 1918, p.15; Glasgow Herald, July 25, 1918; ASE, Monthly Journal and Report, August 1918, p.27; Wolfe, op.cit., pp 229-34; USB, Monthly Report, November 1917, pp 7-9. The government also sought to rely on exhortatory appeals from the Trade Union Advisory Committee, that workers should respond to abolition of the certificates with restraint, and not engage in a "free-for-all". See USB, Monthly Report, October 1917, p.13; ASE, Monthly Journal and Report, October 1917, p.56; ASCM, 61st Quarterly Report, December 8, 1917, p.60, supplement; Labour Gazette, October 1917, p.356; MUN 5/79/340.1/4; Glasgow Herald, September 26, 1917. For the similar appeal from the Admiralty Transfer Committee, see ibid., October 1, 1917 and AIMS, Monthly Report, December 1917, p.243 in connection with the Clyde district. The immediate effect of repeal and the wider lessons to be drawn therefrom will be discussed briefly in the final chapter.

CHAPTER TENWomen and the Tribunal

## I

Introduction

The experience of factory women under the Munitions Acts reveals an ambiguity similar to that which characterized the more general experience of female munitions workers during the war. For the evidence, both contemporary and recent, which seeks to analyse women's factory experience reveals noticeable inconsistencies of interpretation which cannot wholly be attributed to differing assumptions by writers as to the "proper" role of women in industrial society. Thus while stress is constantly placed in the literature on the alleged docility of women munitions workers, evidence to contradict this image, and thereby to justify an alternative picture displaying female militancy, can be offered. Sometimes, indeed, the same author, in portraying factory women in a passive light, draws attention to behaviour inconsistent with such a picture.

Thus, if evidence exists to support the view that women's attitudes and behaviour corresponded to a model of cheerful, unassuming and undemonstrative conformity with the production demands of supervisors, the paradox presented by the evidence for discontent, activism and militancy comes sharply into focus. To offer an explanation which resolves this paradox is beyond the scope of a study which purports, in a limited fashion, to examine women's experience under the Munitions Acts.

But the rather obvious point might be made at this stage that factory workers, whether male or female, who spent most of their working hours cooperating with the aims of management, might nonetheless on occasion, indeed on numerous occasions, engage in industrial disruption on a scale



which might lead one to question whether militancy was not a more appropriate leitmotif of their behaviour than submissiveness, be it spineless or resentful. The grievances of female munitions workers were in many respects significantly different from those facing male workers. But many were the same, and derived from the same source. In particular, wage restraint, the Ordering of Work regulations and the leaving certificate scheme under the Munitions Act did not discriminate between male and female munitions workers. Both sexes were subjected to the statute's intrusions. That being so, the allegedly stronger capacity of women to tolerate dull, monotonous working conditions than men, their supposed greater dexterity, lesser ambition, inexperience and shyness could scarcely make them immune from the workings of an act which encroached on their liberty. That many women responded by rebelling, by displaying insubordination, by committing statutory offences, is certainly to be attributed to a conjunction of many factors. But among them, the new-found confidence generated by the lavish praise poured on munitions girls interacted on numerous occasions with the raw experience of oppressive working conditions to prompt challenges to the legal order which underpinned many female workers' sense of exploitation. Male hostility to the Munitions Acts, which might take the form of "disobeying a lawful order" issued by a foreman, might be a potent example in appropriate circumstances. Workers' utilisation of the munitions tribunals themselves, by virtue of, for example, complaints that employers were breaching wage regulation orders, or by means of leaving certificate applications pointed to the steps which aggrieved female munitions workers might themselves take. Actually to apply to a munitions tribunal or to suffer the experience of a tribunal prosecution are surely signifi-

cant indicators of the new breed of factory women which wartime exigencies spawned.

It may, in short, be argued that the conception of female labour as predominantly docile, uncomplaining and tractable was essentially a pre-war notion carried over into wartime by those employers, government officials and trade unionists for whom (in sexist terminology) the wish was father to the thought. In contrast, female acuity and preparedness to be assertive derived, in some cases, from their chosen responses to the distinctive experience of wartime factory discipline under the pervasive glare of statutory restraints. Such attitudes may also have been influenced by the spectacle of men's entanglements with the munitions tribunal, a proposition which may be especially tenable in the case of Glasgow.

Thus if the experience of the Glasgow munitions tribunal pointed to the existence of occasional female recalcitrance, militancy and discontent, it remains problematic, nonetheless, whether its case load is suggestive of a deep undercurrent of dissatisfaction among those who were otherwise suffocated in eulogistic praises repeatedly sung by local dignitaries<sup>1</sup>.

An extensive study of local factory conditions would be required in order to explore this question fully, a task beyond the scope of the present work. But wider influences might be relevant, in particular, the local Glasgow tradition of protest (cf. the rent strikes) the high degree of politicisation, the influence and example of male workers, and indeed the broad religious and educational influence which could steel groups

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<sup>1</sup> Such praises included, inter alia, "devoting themselves whole-heartedly to work which was necessary for their soldiers", per Lady Beardmore: Glasgow Herald, January 8, 1916; "acquitting themselves well in their new callings and duties were provisions of great advantage to their employers and the country generally", per Lord Strathclyde, Lord Justice-General: ibid., March 15, 1916. Cf., ibid., August 12, 1916 ("rendering such magnificent service") and ibid., November 14, 1916 ("their hearty cooperation").



and individuals to promote issues and pursue grievances with a confidence lacking in those with no comparable traditions of history, culture and intellectualism<sup>2</sup>. As Melling has recently reminded us<sup>3</sup>,

"... some historians have argued that the very different economic structure of towns and cities affected the industrial and social relations to such a degree that the spatial fragmentation of industrial society must be considered a major factor in its political development".

"Community" analysis, linking work with non-work, now assumes prominence<sup>4</sup>. Thus only local studies conducted elsewhere can determine whether we must revise our assessment of women's industrial role during the war to take account of hitherto undiscovered pockets of unrest on the scale suggested by the Glasgow tribunal case load<sup>5</sup>.

Notwithstanding, the point should be stressed that the experience of women munitions workers nationally, at the hands of the munitions tribunals seems to have corresponded on balance to a more cooperative relation with authority than to a confrontational relation. Thus it appears that, overall, women's exposure to the munitions tribunal was in general less visible, less prominent and indeed less pressing both from the authorities' point of view and from the perspective of female workers themselves in respect to leaving certificate and compensation applications. Moreover, it should occasion no surprise that a number of factors which have been identified as relevant in determining the success of the female invasion into the factories can also be pressed into service to account

<sup>2</sup>Cf. R.J. Morris, "Skilled Workers and the Politics of the 'Red' Clyde", Scottish Labour History Society Journal, No.18, 1983, pp 6-17.

<sup>3</sup>Joseph Melling, "Scottish Industrialists and the Changing Character of Class Relations in the Clyde Region c. 1880-1918", op.cit., at p 63.

<sup>4</sup>Ibid.; Keith Burgess, "Workplace, Community and the Crisis of Clydeside's Political Economy in World War 1", noted in Social History Society, Newsletter, Vol.6, Spring 1981, pp 3-4.

<sup>5</sup>Cf. Gail Braybon, Women Workers During the First World War (London: Croom Helm, 1981), a work which expressly (p 11) excludes any local studies (and cited hereafter as Braybon (1981)).

for the limited intrusion of the tribunals into the working affairs of munitions girls. Thus supposedly docile female attitudes to their employment, the positive conception by women workers of their wartime role, their spirit of patriotism, their overall gains in real wage terms (given the scandalously low pre-war base against which even the paltry wartime rates can be favourably compared), the meticulous cultivation of welfare work, all conduced to an atmosphere where contentment, and not necessarily grudging contentment, was more in evidence than was dissatisfaction. That women on occasion rebelled, and that their rebellion might be visited with tribunal discipline, is not to be wondered at, given the oppressive conditions under which many were working. Nevertheless, as a crude and inexact index of industrial unrest, resort to the munitions tribunal in the case of women throughout the country is suggestive of an occasional ripple of discontent rather than of an unrelenting storm of protest.

#### Women's 'Aptitude'

Writers have recently drawn attention to those distinctive qualities allegedly possessed by women munitions workers which contemporaries considered made them eminently suited to repetition shell work. Thus Ineson<sup>6</sup> has pointed to the contemporary identification of women with unskilled work and with low wages in new areas of employment. Such women were not considered by many employers and by "informed" opinion to be worth training in all-round skills since marriage would sooner or later remove them from the labour market. The skill thus resided in the machine, not the operator. Perhaps more importantly, women, unlike men, it was alleged, could withstand the monotony of repetition work. Biologi-

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<sup>6</sup> Antonia Ineson, "Women's Employment in the Munitions Industry in the First World War" (unpublished, 1979) pp 8-10.



cal and psychological explanations were invoked to justify the view that women's need of mental stimulation was less than in the case of men.

Ineson quotes Barbara Drake's opinion as to why women might prefer "purely automatic operations". It was because<sup>7</sup>,

"The intimate circle of home and family, the human drama of personal relationships and domestic happenings, play by natural or social law a deeper part in feminine than in masculine psychology."

Clearly, "weightier" matters such as strike prohibitions and illegal challenges to foremen's orders were thought to be less likely to trouble those of such a placid disposition.

In the case of women undertaking "men's" work, Braybon<sup>8</sup> has argued that women were more "docile" than men, with a lesser propensity to strike or to complain about working conditions, perhaps attributable to their lack of adequate trade union organization, to their patriotism and to satisfaction with their earnings. They were accused by employers of being unambitious, careless and reluctant to assume responsibility. By contrast, women on repetition work were praised by employers for their efforts, thereby appearing to confirm that women were tolerant of monotony, cheerful, dextrous and cheap. That is, they were seen as short-term workers who would pose no threat to the status of the more skilled male worker, the "natural" breadwinner over the long term.

Deborah Thom's study of women workers at the Woolwich Arsenal<sup>9</sup> reinforces the above interpretations. Girls were said to be more diligent

<sup>7</sup>Cited *ibid.*, p 10.

<sup>8</sup>Gail Braybon, "Attitudes to Working-Class Women in Industry during the First World War" (unpublished, 1979) pp 4-5, 9, 12.

<sup>9</sup>Deborah Thom, "Women Munition Workers at Woolwich Arsenal in the 1914-1918 War", University of Warwick, M.A. thesis, 1975, p 49.

than boys in concentrating on a single task; a reflection, indeed, of how they perceived their role at work. Because of impending marriage, jobs were temporary and more limited in scope than in the case of males. Management believed that female workers were "keen to do as much as possible,"<sup>10</sup>, needed less supervision and were easily trained. Average wages were low but together with bad conditions and speed-up, were patriotically accepted. Thus trade union standards were an unfamiliar concept, except perhaps among the older women. Trade union organization, indeed, was viewed as an external element rather than an enterprise which the women themselves could fashion. In sum, women at the Arsenal were "never described as doing anything for themselves. They are the passive sufferers of government regulation and protection ..."<sup>11</sup>.

Women munitions workers, thought outspoken contemporaries, responded well to encouragement and to praise. Hurwitz quotes Monica Cosens' description of the "willing way they toil for their country, from their readiness to face difficulties with a smile, from their loving natures and kindly hearts ..."<sup>12</sup>. G.A.B. Dewar pointed up the contrast with the men. Thus<sup>13</sup>,

"Officialism was apt also to believe that munition-makers both male and female, when called on to make an additional spurt, would be nerved by hearing talk about their pay for overtime. Women and girls needed a different appeal, whatever many men may have liked. They wished to be told that their extra strain was necessary to our troops in the field. Some of the female labour came from the roughest strata in our society, yet its patriotism had a strong heart and a good circulation."

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid., p 157.

<sup>12</sup> Hurwitz, State Intervention in Britain, op.cit., p 135.

<sup>13</sup> Dewar, The Great Munition Feat, op.cit., p 315.



These however were just the sort of sentiments which exasperated women trade unionists like Mary Macarthur. Her complaint was that<sup>14</sup>,

"The woman munition-worker has been praised till modesty should blush if a tinge of cynicism did not by now color her feeling towards those who praise .... Fair words she has had in plenty. The thing that she has yet some difficulty in obtaining is the fair wage ...."

When women were discriminated against over the matter of equal pay, said the New Statesman<sup>15</sup>,

"This very frequent breach of faith is all the more disreputable ... in that the sufferers are just those least able to protect themselves by a strike, and those whose patriotism in continuing at work, under whatever conditions, is constantly made the subject of flattery and cajolment."

That munitionettes displayed any dissatisfaction with their circumstances might well seem remarkable, given the character "traits" cited previously and given their apparent reluctance to hold up munitions supply. Yet there is adequate evidence of female unrest in the factories which at the very least casts doubt on the universality of the stereotyped woman munitions worker portrayed above.

#### Female Protest

A certain amount of unruly or undisciplined behaviour was due, according to the Woolwich Pioneer, to the 'fact' that munitions girls "are ignorant, heedless and emotional and their natural love of excitement leads them into danger"<sup>16</sup>. Ineson, similarly, cites the opinion of a lady superintendent at a Leeds shell factory who explained that women

<sup>14</sup>Nation, August 19, 1916, pp 629-30.

<sup>15</sup>New Statesman, August 24, 1918, p 405.

<sup>16</sup>Woolwich Pioneer, September 29, 1916; cited in Marion Kozak, "Women Munition Workers During the First World War, with Special Reference to Engineering", Hull University Ph.D, 1976, p 286.

unfamiliar with factory life were "excited, restless and often absurdly suspicious ..." <sup>17</sup>. Thus one strand to women's indiscipline could be dismissed as the frivolous antics of socially incompetent individuals who engaged in bouts of child-like misbehaviour. Noting in December 1915 that "Woman is proverbially irrational" <sup>18</sup>, the New Statesman, a year later, elaborated on this remarkable claim, commenting that <sup>19</sup>,

"... although women often learn new processes very quickly and work with extraordinary rapidity and accuracy, usually producing an output larger than that of men, they are more liable than men to get "fed up". They will work steadily and accurately for months, and then abruptly lose interest, lose their tempers, ruin their work. They are frequently hysterical for no evident reason. Magnificently calm in the midst of an explosion; they will lose their heads completely when the danger is further away and uncertain."

That a multitude of causal factors was at play, whether psychological, physiological, ergonomic, economic or social, is difficult to dispute. Thus the whole panoply of welfare supervision was deployed to immunise women from full exposure to the "bread and butter" concerns preoccupying male munitions workers. At its broadest, the task imposed on welfare supervisors was to engender "character formation" among those under their authority and influence. Female munitions workers were reduced, in the words of one modern author, to a state of "semi-captivity" <sup>20</sup> whereby the supervisor's presence intruded into every sphere of the worker's life. Moral guidance was therefore seen by the authorities as an integral element in the drive to improve women's working conditions.

<sup>17</sup> Ineson, op.cit., p 13.

<sup>18</sup> New Statesman, December 4, 1915, p 199.

<sup>19</sup> Ibid., January 13, 1917, p 346.

<sup>20</sup> Kozak, op.cit., p 281.



At a narrower level, however, it was recognized that symptoms of moral inadequacy were reflected in industrial unrest. As Ineson, somewhat paradoxically, notes<sup>21</sup>,

"Women were often seen as less manageable than men; absenteeism, a high turnover of workers, sabotage, time 'wasting' and unannounced walkouts were not easily forestalled because of their nature."

The impression of the "docile, obedient and machine-like" woman worker<sup>22</sup> must therefore be contrasted with that of the "New Factory Woman" hailed by the New Statesman in June 1917. The war had witnessed an "amazing transformation" among factory women. Thus<sup>23</sup>,

"Meek, "bullet"-dreading women who were factory workers for years before the war and used to cringe to managers and foremen, girls from eighteen to twenty-five .... who were thrust into the labour market the moment they left school ... appear more alert,, more critical of the conditions under which they work, more ready to make a stand against injustice than their pre-war selves or their prototypes. They seem to have wider interests and more corporate feeling. They have a keener appetite for experience and pleasure and a tendency quite new to their class to protest against wrongs even before they become intolerable."

On the other hand, it is probably correct, as Andrews and Hobbs suggested in 1921, that the extent of strikes in which women munitions workers participated was "comparatively infrequent"<sup>24</sup> and little in Beryl Stanley's paper, tantalisingly entitled "Women in Unrest, 1914-1918"<sup>25</sup>

<sup>21</sup> Ineson, op.cit., p 13.

<sup>22</sup> Irene Osgood Andrews and Margaret A. Hobbs, Economic Effects of the World War upon Women and Children in Great Britain (New York: Oxford University Press, 1921) p 159.

<sup>23</sup> New Statesman, June 28, 1917, p 271. Cf., Marwick, The Deluge, op.cit., p 94; Andrews and Hobbs, op.cit., p 200.

<sup>24</sup> Ibid., p 93.

<sup>25</sup> Beryl Stanley, "Women in Unrest, 1914-1918", Labour Monthly, Vol. 22, 1940, pp 458-64.

can be cited to refute this assertion. Inevitably, strikes involving women and which infringed the Munitions Act did occur during the war, as did other statutory offences committed by women workers. The scale of the infringements is such, however, to suggest that other instruments of social control, to which allusion has already been made, were effective in minimising female non-conformity.

Therefore, given a background where women's propensity to engage in industrial protest or indiscipline<sup>26</sup> was acknowledged as being less than that of male munitions workers, and where the authorities consciously cultivated a programme of welfare provision in order to smother dissatisfaction at birth, what was in fact the experience of women before the munitions tribunals?

There were, of course, a few dramatic accounts of the oppressive treatment meted out to female munitions workers hauled before the tribunals. Prior to the war, indeed, Nina Boyle, political organizer of the middle-class Women's Freedom League had complained that the attitude shown towards women in the courts, whether as accused, witnesses or victims, was at best patronising and unfair, and at worst extremely harsh. Sentences, it was complained, were out of proportion to the crimes involved and, what was worse, men tended to be let off lightly for similar offences<sup>27</sup>. What was carried over into possibly a few munitions tribunal hearings prior to the introduction of women assessors in 1916 was epitomised by the sense of shame and embarrassment experienced by three women seeking leaving certificates and complaining of

<sup>26</sup> See also Eleanor F. Rathbone, "The Remuneration of Women's Services", Economic Journal, Vol. 27, 1917, pp 55-68, at p 59.

<sup>27</sup> See Joan Lock, "It's a Fair Cop", Sunday Times Colour Supplement, November 5, 1978, p 45. For Nina Boyle, see also Kozak, op.cit., p 283. The presence of women's police patrols often discouraged women operatives from taking strike action: ibid.



sexual harassment; or, as it was more delicately described in the case, "gross insult" perpetrated by their foreman. The failure on the part of the women to recover for loss of wages and for expenses, only added insult to injury<sup>28</sup>.

The role of the tribunal in upholding the sweated wages of women munitions workers also attracted adverse comment<sup>29</sup>. The case of the girl earning 12/- a week who had been refused a leaving certificate to take up employment elsewhere at £1 a week was widely publicised. Thus the Woman Worker commented that<sup>30</sup>,

<sup>28</sup> Edith Abbott, "The War and Women's Work in England", Journal of Political Economy, Vol. 25, 1917, pp 641-78, at p 673; Andrews and Hobbs, op.cit., p 98; Woman's Dreadnought, January 8, 1916. It should be stressed that details of the above case are flimsy, obscure and possibly highly coloured, though, admittedly, we cannot be certain. No cases voicing a similar complaint have been discovered in the files of the Glasgow and labour newspapers consulted. It is possible, of course, that comparable cases were heard elsewhere but received little publicity. The absence of munitions tribunal registers which might list all cases heard and indicating the gender of the employee is of course a major obstacle. Tribunal statistics, as already noted, also fail to give a breakdown according to gender. It may be observed that the provision for compensation for constructive dismissal introduced into the 1916 Act on the suggestion of W.C. Anderson M.P., seems to have derived from this case. See OHMM, Vol. IV, Part II, p 75n. Perhaps there is a coded reference to sexual harassment in the advice given by an anonymous female tribunal assessor: "you may have some serious complaint to make with regard to the men with or under whom you are working; the complaint must be of a serious kind, not a mere quarrel." See 'A Woman Assessor', Women in the Munitions Courts (London & Manchester: National Labour Press, c. 1917) p 7.

<sup>29</sup> For general comments on the "staggeringly low" wages sometimes earned by women, see Braybon (1981) op.cit., pp 76-80.

<sup>30</sup> Woman Worker, January 1916, pp 5-7, cited in Andrews and Hobbs, op.cit., pp 94-5; Abbott, op.cit., p 669. For a similar case where the leaving certificate was granted see, ibid., pp 674-5. The biographer of Mary Macarthur refers to a case where a girl earning 10/- a week was refused a certificate to take up another job paying 17/-. See Mary Agnes Hamilton, Mary Macarthur (London: Parsons, 1924) pp 150-1. For the case of a Manchester woman earning 13/1d for a 61½ hour week, see Woman's Dreadnought, February 19, 26, 1916.

"The first Munitions Act came quietly - on tip-toe, like a thief in the night, and not one woman worker in a thousand knew of its coming. Their shackles were riveted while they slept ... The foreman's reply to the complaining one is no longer: "If you don't like it you can leave it". She can't ... The other day a munition worker, who was being paid 12/- weekly, had a chance of doing the same work for another employer at £1 weekly, but the Court refused her permission to make the change. And thus we have a concrete case of the State turning the lock in the door of the Sweater's den."

The confusion sown by doubts as to whether a particular worker did in fact come within the jurisdiction of the Munitions Act, especially for the purpose of determining whether a leaving certificate was required, may well have affected women more than men given that the latter were less likely to be found working in the trades ancillary to munitions production such as tent and uniform manufacture and food processing for the Army. One case cited involved a shirt maker who deliberately misinformed his girls that they required a leaving certificate before taking up alternative employment<sup>31</sup>. Another case concerned a manufacturer of military tents who refused a certificate to a woman earning 11/11d a week and who had already been promised munitions work elsewhere<sup>32</sup>. A final example in this category is the case of Phoebe Mayne, a 16-year-girl engaged on the manufacture of an insulating substance known as micanite used on dynamos supplied to the Admiralty<sup>33</sup>. The tribunal held that this was not munitions work and so no leaving certificate was required. The employers, however, instituted the first appeal to be heard from a tribunal and had the decision reversed. The point of referring to such cases is to suggest that the feeling of power-

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<sup>31</sup>Abbott, op.cit., p 674.

<sup>32</sup>Woman's Dreadnought, July 8, 1916.

<sup>33</sup>Mayne v Micanite and Insulators Co. Ltd. (1916) 1 MARL-10, April, 7, 1916. Abbott, op.cit., p 674 quotes the tribunal decision as reported in the Woman Worker but fails to note that the decision was reversed on appeal by the employer.



lessness engendered by the Munitions Act, to which Braybon has drawn attention<sup>34</sup>, may apply even where the scope of the Act is not clearly delineated, as in such cases. As Andrews and Hobbs, not wholly accurately, observed<sup>35</sup>,

"Though on some government contracts, such as clothing, the [leaving certificate] system was not in force, it was often believed that the cards were required on every form of government work. They were indeed necessary in so many factories that employers hesitated to take workers without them, which made it hard to secure work in a munitions plant, for the first time."

That the certificate provisions "hamper and irritate men and women alike"<sup>36</sup> could therefore scarcely be disputed. Thom has observed that to circumvent the statutory restrictions, girls at the Arsenal,

"... frequently broke the leaving certificate rules. Several were caught registering at the Arsenal under false names to disguise the fact that their previous work was in munitions."<sup>37</sup>

Indeed the National Federation of Women Workers was one of the unions which told the government in 1917 that they could no longer answer for the discipline of their members as long as the provisions were in force<sup>38</sup>. As we have already seen, the decision to abolish the leaving

<sup>34</sup>Braybon, op.cit., p 4.

<sup>35</sup>Andrews and Hobbs, op.cit., p 96. Cf., Susan Lawrence in the Labour Woman, Vol. 3, August 1915, p 315: "Tents are munitions; boots are munitions; biscuits and jam are munitions; sacks and ropes are munitions; drugs and bandages are munitions; socks and shirts and uniforms are munitions; all the miscellaneous list of contracts which fill up three or four pages of the Board of Trade Gazette, all, all are munitions." For the tribunal case of two female jute workers in Dundee, see Glasgow Herald, January 24, 1917; for a female draughtsman in London, see ibid., January 21, 1916.

<sup>36</sup>Andrews and Hobbs, op.cit., p 95, citing the Woman Worker, January 1916.

<sup>37</sup>Thom, op.cit., p 61.

<sup>38</sup>N.C. Soldon, Women in British Trade Unions, 1874-1976 (Dublin: Gill & Macmillan, 1978), p 89.

certificate had apparently already been taken by the time the regional Commissions on Industrial Unrest had reported<sup>39</sup>. Before then, however, many more injustices - or apparent injustices - had been recorded. For example, one London woman, Jane Rutter, had obtained permission from her employer to return home to look after her wounded son who had just returned from the Front after 2½ years<sup>40</sup>. She then wrote to her employer to state that she could not resume employment until he had returned to the Army, whereupon she was visited by the firm and told that she had been discharged. She had not received a leaving certificate in person. However, it was sufficient, according to the Appeal Tribunal, for the employer to direct the worker to a special department at the works from where certificates were issued. The company had not, therefore, "unreasonably refused or neglected" to issue a certificate.

But it was not all "bad news" on the leaving certificate front for women. While employers might be unbending in releasing female staff, the tribunals might in fact order their release. Thus a young married woman in Birmingham complained that her employers, a firm at Erdington, had unreasonably withheld a leaving certificate. She worked from 7 a.m. till 9.30 p.m. with only 1¼ hours break. It took her an hour to get to work and an hour to get home. She could not organize meal times properly and was unable to attend to her child. In her case, the certificate was granted<sup>41</sup>. Another woman employed by Siemens Bros., in London, had to perform her work as a foreman's clerkess in a glass box in the middle of about 300 machines, mainly drilling and capstans. She complained of

<sup>39</sup>Chapter nine (supra)

<sup>40</sup>Rutter v. W.T. Henley's Telegraph Works Co. Ltd., (1917) 2 MAR 91-8, June 8, 1917. For a strike of women at Henley's, see Thom, op.cit., p 98.

<sup>41</sup>Woman's Dreadnought, December 11, 1915.



the smell of oil, suffered from severe headaches and had been off sick for ten days. The firm claimed that her real reason for seeking a leaving certificate was to obtain a better paid job elsewhere, but she managed to persuade the majority of the tribunal, including a woman assessor from the NFWW, that ill health was the reason. Similarly a Liverpool firm which sought to hoard female labour was obliged to release six women who had applied for leaving certificates. The firm's complaint that "the lack of work might cease any day, and it would be a serious thing if they were short of forty or fifty girls" was rejected by the tribunal<sup>42</sup>. Even where the leaving certificate provision was wielded by the employer in one case, the Labour Woman derived perverse pleasure. As it explained<sup>43</sup>,

"The Munitions Act has its humorous side ... A young lady of the comfortable classes bravely took up munition work - "just like an ordinary worker". Then her brother was to be married and (not like an ordinary worker) she asked for a day off. The manager refused it. The work must go forward and she could not be spared. Then, she declared indignantly, she would give a week's notice. Promptly the manager refused her a leaving certificate and she learned to her surprise that the compulsory provisions of the Munitions Act applied to her as well as to her working-class colleagues in the factory. She did not go to the wedding, but she is becoming doubtful about the value of industrial coercion!"<sup>44</sup>

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<sup>42</sup>For both cases, see Abbott, op.cit., citing the Woman Worker, April-May, 1916.

<sup>43</sup>Labour Woman, Vol.4, August 1916, p 43.

<sup>44</sup>In fact, in some areas such as Coventry, labour exchanges, in placing women in new munitions posts, did not insist on girls producing leaving certificates from their previous employers. See Bev. (15i), f 291, "Report on Coventry Labour Exchange District by Mr. Hall and Miss Cassells, March 24, 1916." For Ministry of Munitions recommendations as to recruitment of women through the Labour exchanges, see Andrews and Hobbs, op.cit., p 80. The Coventry scheme was the exception rather than the rule. Nonetheless, in one Glasgow labour stealing prosecution, a projectile factory fined £7:7/- stated that the girls stolen from a Tollcross firm of brickmakers had been supplied through the labour exchange, and that one of the girls had claimed that she had been unemployed for the requisite six weeks. See Glasgow Herald, October 26, 1916.

The prosecution of women workers for misconduct was an occasional, though not wholly rare, event. In one case at a shell filling factory, the girls refused to return to work after their lunch break and began to throw crockery and food around the canteen in protest at what they considered was the unfair dismissal of a canteen attendant<sup>45</sup>. Deborah Thom's account of women's work at the Arsenal also points to workshop dissatisfaction resulting in tribunal prosecutions for "disobeying lawful orders"<sup>46</sup>. The misdemeanours cited by her ranged from the activities of Helen Bentwich in collecting NFWW subscriptions during working time<sup>47</sup>, to a collective refusal by a number of girls to countenance a transfer to another department. A similar case arose in Edinburgh where three girls were charged with having refused to start a temporary job after having completed a previous task<sup>48</sup>. The girls complained that the new job was detrimental to their health and produced two medical certificates to that effect. Nonetheless, by a majority, they were found guilty of disobeying a "lawful" order, though no penalty was imposed.

Woolwich Arsenal and other national factories were, of course, particularly strict where materials were wrongfully appropriated by employees or where items which might constitute a safety hazard were brought into the factory. It was, as Kozak notes<sup>49</sup>, part of the duties of the new women's police patrols to search for smuggled items. In one

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<sup>45</sup>Andrews and Hobbs, op.cit., p 93.

<sup>46</sup>Thom, op.cit., pp 91-2, 96-8.

<sup>47</sup>For a case involving the dismissal of three girls for joining the NFWW see Andrews and Hobbs, op.cit., p 96. Compensation was secured.

<sup>48</sup>Glasgow Herald, June 20, 1917.

<sup>49</sup>Kozak, op.cit., p 283.



case<sup>50</sup>, a number of girls employed at the national factory at Gretna were prosecuted for petty theft, involving a number of items of clothing belonging to the Ministry of Munitions. Sheriff Fyfe, in imposing fines of £1 in each case, declared that he was "greatly disappointed in the munitions girls" who had evidently not heeded an earlier warning delivered by him. In another case, a young employee at the Arsenal, Ethel Kilby<sup>51</sup>, was found to have carried a number of forbidden articles, including a mirror, power-puff, steel chain purse and two hair slides into the "clean" side of the shifting-room which was part of the Fuze Branch of the works. Since the regulations stated explicitly that "No articles of iron, steel or metal are allowed on private underclothing of workmen ...", and since such regulations were read out monthly to the staff, the Appeal Tribunal, reversing the original tribunal decision, held that summary dismissal was justified in view of the potential danger to other workers on the site. That the tribunal assessors had considered that suspension or a lesser punishment than dismissal was appropriate, was therefore rendered of no consequence.

Yet when a Coatbridge iron works, William Baird & Co. Ltd., infringed Home Office regulations by employing a girl under 18 years of age on night shift, despite having been refused permission for her employment, Sheriff Lee imposed a modest fine of 30/- in view of the fact that

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<sup>50</sup>Glasgow Herald, November 12, 1917.

<sup>51</sup>Kilby v Chief Superintendent of Ordnance Factories (1917) 2 MAR 121-3, July 31, 1917. Cf., Lane v CSOF (1917) 2 MAR 117-120, July 31, 1917, involving a male worker governed by a less explicit rule.

"a certain amount of regard must be had to the difficulties in securing labour."<sup>52</sup> Thirty shillings was therefore the price put on a young girl's life, for she had in fact been fatally injured while on her unlawful night shift, crushed between two waggons on her way to her supper break. The price of life, like the cost of labour, was evidently cheap in the Lanarkshire iron and steel trade<sup>53</sup>.

In respect to timekeeping offences, Kozak notes<sup>54</sup> that there were few prosecutions of women, though she refers to the National Labour Press pamphlet, Women in the Munitions Courts, which declared that firms had on occasion prosecuted 20 - 30 women at a time for bad timekeeping. The pamphlet added that, "Many firms use the Courts freely as a means of making their workers keep good time." But it is more than likely that prosecuting activities were directed more against male bad timekeepers than against females. Indeed, Seebohm Rowntree, the ministry's head of welfare, advised that no woman's case should be brought before a munitions tribunal until the welfare supervisor had been consulted<sup>55</sup>. The Ministry of Munitions in fact stopped prosecuting women altogether for bad timekeeping in May 1917, leaving the responsibility to employers. Visits by welfare officers and superintendents became the principal

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<sup>52</sup> Glasgow Herald, January 27, 1917. When the Ayr Gas Company was prosecuted for overworking its female staff, a justification for the prosecution was stated to be that "To work women for such hours and under such conditions was calculated to bring the substitution scheme into disrepute and make it objectionable from a trade union point of view." See ibid., February 8, 1917.

<sup>53</sup> For two prosecutions of a Leeds engineering firm, thrown out by the stipendiary-magistrate on the grounds of "national urgency", despite Home Office and War Office support for the prosecutions, see Labour Year Book 1916, p 90.

<sup>54</sup> Kozak, op.cit., pp 235-7.

<sup>55</sup> Andrews and Hobbs, op.cit., pp 156-7.



means of ensuring punctuality<sup>56</sup>. Indeed once the Munitions Act 1917 was passed in October of that year, all Ordering of Work prosecutions were henceforth conducted by the Ministry of Munitions alone, and not by employers. Therefore since the ministry had already ceased prosecuting women bad timekeepers in May 1917, the result was that after October 1917, bad timekeeping in the case of female munitions workers was no longer subject to prosecution by anyone<sup>57</sup>.

Attempts to ameliorate the position of those women appearing before the tribunals naturally focused on the appointment of women's assessors to the panel. Part of the campaign to amend the 1915 Act was specifically concerned with this issue, though it must be acknowledged that, as is not uncommon in campaigns for law reform, the evidence for change was, as one might gather from some of the above account, highly coloured and selective, particularly in respect to the catalytic case of the three women subjected to "gross insult" (supra). Nonetheless, the major union conference held on November 30, 1915, and attended by, inter alia, the NFWW and the Manchester District Women's Trades Council<sup>58</sup>, demanded the appointment of women assessors<sup>59</sup>. Yet, though the proposal apparently

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<sup>56</sup>Kozak, op.cit., pp 235-7.

<sup>57</sup>Individual firms could of course continue to enforce their own disciplinary rules as to good timekeeping by threatening fines, so long as the provisions complied with the Truck Acts. The Arsenal had its own disciplinary system and fined its workers heavily for lateness. See Thom, op.cit., p 81. Firms could also dismiss employees and then seek to defend a claim for compensation and/or a leaving certificate. In one case, a forewoman employed by the Carron Company was refused compensation but granted a certificate following her dismissal for bad timekeeping. See Glasgow Herald, March 17, 1916.

<sup>58</sup>Ibid., December 1, 1915.

<sup>59</sup>Cf. Nation, December 18, 1915, p 441.

received the approval of "all sides of the House of Commons", the New Statesman reminded its readers that the government<sup>60</sup>,

"... refuses to give either this or any other Assessor any real membership of the Munitions Tribunal, in which the lawyer-chairman (to whom the Minister of Munitions admittedly circulates confidential instructions<sup>61</sup>) is to remain sole judge."

Indeed in January 1917, The Times<sup>62</sup> was acknowledging that the institution of women assessors was an inadequate safeguard against instances of "flagrant injustice to shy and inexperienced girls" who were summoned to the tribunals. The fines inflicted were still considered excessive, particularly in the case of women who tended to earn low wages. It could scarcely be comforting to be informed by the author of Women in the Munitions Court that the woman assessor was "there to help you in every way she can", nor convincing to be told that "she is there to take your side"<sup>63</sup>. Sensible advice as to how to conduct oneself before the tribunal, how to ensure that one's evidence was clear and consistent, the offer of very broad guidelines on the scope of the leaving certificate and Ordering of Work provisions which were culled from homely examples certainly made the document more perceptive and helpful than Henry Slessor's rigid, formal and wooden account of the Act written soon after its enactment<sup>64</sup>. But the reiteration of the important role of trade unions in assisting women before the tribunals was probably the most practical advice to be offered. Thus the "one all-important fact" was

<sup>60</sup> New Statesman, December 11, 1915, p 219.

<sup>61</sup> For this, see Rubin (1977b), op.cit., p 223.

<sup>62</sup> The Times, January 15, 1917, cited in Stanley, op.cit., p 459.

<sup>63</sup> 'A Woman Assessor', op.cit., p 2.

<sup>64</sup> H.H. Slessor, Opinion on the Munitions of War Act 1915 (1915).



that "the only way in which each one of you can get individual information and help for your own particular case is through your Trade Unions"<sup>65</sup>.

Indeed, as was recognized during the war, the NFWW was<sup>66</sup>,

"... most successful, not only in organizing the munition makers, but also in protecting their interests before the Munitions Tribunals."

The extent to which this statement is accurate can perhaps be gauged by considering the activities of the Glasgow tribunal in respect to women workers, a topic to which we now turn our attention.

## II

### The Glasgow Experience

The NFWW did of course organize in Glasgow. Indeed prior to the Clyde deportations in March 1916, the union had claimed 100% membership among women shell workers at Parkhead Forge<sup>67</sup>, though a mere rump remained following the deportations<sup>68</sup>. According to Herbert Highton, there were in August 1916 probably around 3-4000 women munitions workers on Clydeside who were members of the four trade unions which recruited in this category. Apart from the NFWW, the other unions were the Workers' Union, the Gas and General Workers' Union and the National Amalgamated

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<sup>65</sup> 'A Woman Assessor', op.cit., p 2.

<sup>66</sup> Abbot, op.cit., p 668. Thom, op.cit., p 97 refers to Ministry of Munitions comments that "a collective response to tribunal discipline was common and that it made their punitive effects limited". The NFWW did not appear to discourage such displays of insubordination.

<sup>67</sup> Hinton, The First Shop Stewards' Movement, op.cit., p 130.

<sup>68</sup> H.E.R. Highton, "Report on Engineering Industry, Clyde District", in Barbara Drake, Women in the Engineering Trades (London: Fabian Society and Allen & Unwin, 1917) p 129.

Union of Labourers (NAUL)<sup>69</sup>, whose officials, as we have seen in previous chapters, represented their members before the local munitions tribunal on a number of occasions. Of course, the total number of women brought into the munitions factories in the district, both national and private establishments, was considerably higher. The 1911 census revealed 3,758 women, including 2,062 in "engineering and machine making", as against 185,442 men employed in the Clyde district metals trades, including shipyards, iron and steel, vehicles, electrical and miscellaneous trades<sup>70</sup>. Table 10.1 (*infra*) shows, however, the extent of the growth of female employment on munitions in the district, a growth which, it should be noted, takes into account the newly-opened national projectile factories at Cardonald, Mossend and Bridgeton, Mile End and the Scottish Filling Factory at Georgetown.

TABLE 10.1

Labour Employed in Munitions in Glasgow  
and West Scotland  
 (excluding regular armament firms)

October 1916			October 1917			October 1918		
Men	Women	Total	Men	Women	Total	Men	Women	Total
20,883	18,825	39,708	21,500	24,523	46,023	22,119	28,087	50,206

Source: Scott and Cunnison, op.cit., p 98.

Indeed, the figures themselves were not lacking in controversy. For in August 1916, when the work of the Clyde Dilution Commission under

<sup>69</sup>Ibid., p 128.

<sup>70</sup>Scott and Cunnison, The Industries of the Clyde Valley, op.cit., p 96.



Lynden Macassey was being wound up, the authorities were claiming publicly that<sup>71</sup>,

"Dilution has already been established in 150 of the largest of the 300 controlled engineering and shipyard establishments on the Clyde, and some 14,000 women have been introduced by the Commission, the greater proportion of whom is engaged on general engineering work, excluding shells."

Clearly, the impression conveyed was that a substantive inroad into the sphere of skilled "men's work" in engineering, which of course excluded routine shell making, had been achieved, thereby impliedly justifying the draconian measures taken some months earlier against the obstructive CWC leaders. A full published account of the dilution campaign, a few days later, slightly modified the picture by indicating that most of the work was of a "repeat character"<sup>72</sup>. Nonetheless, in many cases, there was claimed to be "little or no repetition". This prompted Highton to point out in the correspondence column of the Glasgow Herald<sup>73</sup> that the figure of 14,000 women cited earlier "might fairly represent the number of women at present actually working in the engineering industry, including shell making". As he was to repeat in the appendix which he provided to Barbara Drake's study of Women in the Engineering Trades (1917)<sup>74</sup>, the Clyde Dilution Commission had put into force 90 schemes of dilution providing for the introduction of 4,500 women on work hitherto performed by men. But only 1,500 women had, by the middle of June 1916, actually commenced work. Since, moreover, 500 of these were engaged on

<sup>71</sup>Glasgow Herald, August 23, 1916. Cf., ibid., August 24, 1916 and A.W. Kirkaldy (ed.), Labour, Finance and the War, (London: British Association, 1916), p 78 n.

<sup>72</sup>Glasgow Herald, September 2, 1916.

<sup>73</sup>Ibid., September 6, 1916. Italics added.

<sup>74</sup>See note 68 (supra)

labouring work, this meant that only around 1,000 women were undertaking skilled and semi-skilled work in engineering establishments<sup>75</sup>. In fact, the overwhelming majority were engaged on shell manufacture in large, custom-built establishments, notably the national factories and the converted Beardmore sites at Parkhead, Paisley and East Hope Street shell filling factory, the last-named the scene of considerable female unrest, as we shall see<sup>76</sup>.

Indeed, the hostility of men to the employment of women in the Glasgow workshops, such as was manifested at Lang's of Johnstone<sup>77</sup>, surfaced, so far as one can gather, in just one tribunal case involving a single individual<sup>78</sup>. Thus a night-shift employee at the Coatbridge works of Stewart & Lloyds, the steel manufacturers, was fined £2 for

<sup>75</sup>Ibid., p 114; Glasgow Herald, September 6, 1916.

<sup>76</sup>It is, indeed, fascinating to note how the old struggles over the numbers game in particular, and over the significance of the dilution campaign in general, have recently been re-enacted in the corridors of academia. See Alastair Reid, "Dilution, Trade Unionism and the State in Britain During the First World War" (unpublished; forthcoming). Though the present author differs from Reid in the latter's conceptualization of the nature of the state, the finding, in the present work, of the importance of wage struggles and of the ambiguous relationship between the rank-and-file and local trade union officialdom gives partial, but not total support to Reid's interpretation of the politics and sociology of Glasgow trades unionism during the war. For further observations, see the final chapter. We will also note in chapter eleven that the analysis of the relationship between legal proceedings under the Munitions Act and dilution as narrowly conceived, appears to confirm that dilution was not a significant substantive issue on Clydeside. Its symbolic importance, however, is more difficult to dispute.

<sup>77</sup>Hinton, op.cit., pp 67-8; McLean (1971) op.cit., pp 51-4; McLean (1983), op.cit., pp 37-40.

<sup>78</sup>Glasgow Herald, July 8, 1916.



having refused to commence his duties when he discovered that women had been working on his job during the day shift<sup>79</sup>. It does appear, therefore, that apart from one other unique tribunal proceeding in Glasgow, where skilled operatives in a Gorbals firm, Messrs. Campbell, Achnach & Co., which made ground sheets for the Army, objected to the introduction of unskilled and female workers unless they received the skilled rate, the introduction of dilution, so far as it related to the employment of women workers, made little impact on the work of the Glasgow tribunal<sup>80</sup>.

<sup>79</sup> Thus his reaction appeared to correspond to the "'old trade-union' type of bitterness, narrow and selfish" which Isaac Mitchell had identified as being displayed at Lang's in later 1915. See McLean (1972) op.cit., p 24n. Cf., the case of the foreman at the Scottish Tube Company who eventually found himself in charge of just two old men. This followed the drafting of women into the stores and machine shops, the appointment of a forewoman and the transfer of the men and boys to other departments. His application for a leaving certificate was refused. See Glasgow Herald, November 23, 1915.

<sup>80</sup> Ibid., November 11, 1915. The case was unique in that it concerned an alleged lockout by the employer. Sheriff Fyfe, however, dismissed the private prosecution undertaken by the firm's garment cutters on the ground of insufficiency of evidence. Humbert Wolfe, Labour Supply and Regulation, op.cit., p 101, saw the removal of the right of lockout as the counterbalance to the prohibition on strikes. The statistics of this supposed bilateral sacrifice, up to July 1, 1916, are shown below, and speak for themselves.

TABLE 10.2

Number of Strike and Lockout Prosecutions to July 1, 1916

Prosecutions	Number of Cases	Number of Defendants	Numbers Convicted	Total Amount of Fines
Strikes	56	1612	1006	£1365:5/9d
Lockouts	1	1	-	-

Source: Cd. 8143 (1915) and Cd. 8360 (1916).

And inevitably so, given the limited inroads into long-established workshop patterns attained by women during the war.

We may reasonably assume, therefore, that most of the women who appeared before the Glasgow tribunal were graded as unskilled labour and were working on, or seeking to work on, shell manufacture. Perhaps this rendered them more vulnerable to punishing work schedules imposed by impatient foremen concerned with output levels; perhaps the strain of the work encouraged them to relieve the pressure by engaging in diversionary activities which infringed the rules. As "unskilled" labour, moreover, the earnings of some of them, even on piece-work, were often insufficient to match increases in the cost of living. The raw ingredients for female worker discontent and unrest were assuredly present in the Glasgow shell shops. Implanted in the distinctive, possibly unique, environment of that city, perhaps its working women were more prepared than those elsewhere to emulate the male members of the local labour movement. For had not the involvement of the latter with the munitions tribunal produced a notable chemical reaction which had reverberated throughout the country in 1915 and the first half of 1916? In Glasgow, the "new factory woman's" so-called "awareness" was, in short, a product, it is suggested, of the infectious, heady atmosphere of a city prone to dissidence.

#### Glasgow Women and the Tribunal

Protests against the low level of wages payable to women workers were reflected in the case load of the Glasgow tribunal. Thus in one case<sup>81</sup>, a woman earning 18/- a week before the war was receiving just

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<sup>81</sup>Glasgow Herald, February 3, 1916.



12/7d on the night shift following the employer's acceptance of government contracts for munitions. It took a tribunal decision to wrest a leaving certificate from the company. In another case, a girl earning 10/- a week and offered work elsewhere at double that amount, simply walked out of her existing job. When her employer complained, the tribunal dragged her back to work her week's notice. Said Sheriff Fyfe, "they could not allow anyone to disregard the law"<sup>82</sup>. Both these cases had been heard in the first half of 1916. Perhaps by 1917, woman's entitlement to a "decent" wage had been accepted by the tribunal chairman. For in January of that year, he is reported to have announced, during one hearing that, "If you want to keep women nowadays, you will have to pay them well."<sup>83</sup> Accordingly, he granted certificates to two women who had been earning 12/- and 15/- respectively and who had now been offered £1 and 24/-.

Numerous non-controversial cases of women seeking either to move into munitions work or to move to more congenial munitions work were heard. Thus a waitress, fish saleswoman, kilt maker, charge-hand with a beer seller [sic], thread worker and a girl employed by a wood firm, all graced the Glasgow munitions tribunal in pursuit of leaving certificates<sup>84</sup>.

<sup>82</sup>Ibid., June 29, 1916. The girl was one of a family of 13, with three brothers in the Army, one of whom had been killed and the mother widowed three years earlier.

<sup>83</sup>Ibid., January 25, 1917. For other examples, see ibid., October 4, 21, 1916. For the case of a Maryhill rubber manufacturer fined £2 for breaching a wage regulation order, see ibid., May 9, July 9, 1918; Jeanie Scott et al., v George McLellan & Co. Ltd., 1918 SMAR 134-8, July 6, 1918.

<sup>84</sup>For these examples, in the order given in the text, see Glasgow Herald, August 15, June 19, 1916; ibid., February 9, 1917; ibid., October 24, January 28, 1916; ibid., January 25, 1917. For the recruitment of fisherwomen to munitions work, see Scott and Cunnison, op.cit., p 98.

as indeed did those seeking work nearer home such as the two girls who complained of a five mile walk to work from their homes in Cambuslang, necessitating their rising at 4 a.m. every morning. Certificates were granted<sup>85</sup>.

However, it is in respect to the extent of industrial disorder and disobedience manifested by Glasgow women munitions workers - where that unrest resulted in a tribunal appearance - which conveys the strong impression that the interpretation identifying the much-vaunted spirit of cooperation among women munitions workers requires modification<sup>86</sup>.

Direct strike action by women workers in Glasgow was nonetheless a rare occurrence; rarer still, if it were visited by a tribunal prosecution. Indeed the only clear-cut such example concerned 36 women at the Eglinton Silica Brick Company at Coatbridge who had struck in protest at what they considered was a breach of faith by their employer<sup>87</sup>. They had originally agreed, in consideration for an increase in wages, to undertake three additional hours work in order to produce more bricks needed for lining furnaces in response to demands from the Ministry of Munitions. But they then refused to resume working in the belief that it was in order to pay the additional wages that the company had dismissed several of their colleagues. At the tribunal hearing, the firm's managing director

<sup>85</sup>Glasgow Herald, February 9, 1917. Cf., ibid., February 26, 1917; certificate refused till written offer of munitions work from another employer produced.

<sup>86</sup>Cf., Stanley, op.cit., passim. Kozak, op.cit., pp 294, 353, 358 for claims of female militancy. The examples offered certainly appear to be isolated and sporadic. By contrast the quantity of tribunal hearings in Glasgow, let alone the number of "justiciable" incidents which actually occurred, may perhaps hint at wider unrest among women, though the context may render Glasgow untypical.

<sup>87</sup>Glasgow Herald, July 10, 1916. The woman assessor was Lois Young of the NFWW. For a men's wage claim at the firm which went to arbitration, see Labour Gazette, January 1918, p 44.



declared that the sacked employees had merely been suspended, though it appears the women were reminded of the installation of a new brick-making machine a year earlier which had led to the redundancy of three male members. Thus they apparently concluded that the employer had discovered a simple method of reducing his overall labour costs, and so were determined to resist what they wrongly imagined was the sacrifice of their colleagues. Unable to contradict the employer's testimony that only suspensions and not dismissals had taken place, the women, represented by Owen Coyle of the Amalgamated Society of Steel and Iron Workers<sup>88</sup>, failed to grasp the initiative by asserting that the Munitions Act did not authorize suspensions (as we saw in chapter one). Indeed Sheriff Fyfe chose to construe their conduct as being an attempt to "dictate to the management". Thus, "What business is it of theirs", he demanded, "as to the number of people employed there?" Even women workers were not immune from Sheriff Fyfe's well-rehearsed lecture that<sup>89</sup>,

"... anything which hampered the production of anything necessary for the prosecution of the war was a very grave offence, chiefly against their own country ... But that prosecution had, he thought, served a good purpose if it had cleared the air of certain opinions the respondents seemed to have entertained, which would be subversive of all discipline in the conduct of industrial work. Respondents must dismiss from their minds that they had to be consulted or have a say in the direction of these works in which they were employed."

Thus not only was munitions production to be protected from interruption by means of judicious prosecutions. But managerial authority, particularly when acting on ministry instructions, was also to be underpinned with the

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<sup>88</sup>Kozak, *op.cit.*, p 358 refers to this strike and correctly notes that it was conducted without the assistance of a trade union. But she fails to note the presence of the trade union official at the tribunal. She also repeats the strikers' claim that dismissals had occurred.

<sup>89</sup>Glasgow Herald, July 10, 1916.

support of unambiguous judicial utterances even against the modest challenge of some women brick makers apparently acting on impulse. The message was therefore once again conveyed by the tribunal that participatory democracy, at the whim of an unorganized grouping, had no role to play in a largely corporatist venture directed from above, and exercised through the agency of the private owner/managers.

In another case, rather than prosecute a number of girls for striking, the employer simply dismissed them by putting them outside the factory gate where they had been employed making lids for shell boxes<sup>90</sup>. The case came to the tribunal in the form of a successful claim by the eleven girls involved for compensation for dismissal without notice, their explanation being that they had been refused a transfer to time rates, while the request of 14 other girls had been favourably treated by the employer. No doubt if the employer had not acted as he had done, the girls would have risked a prosecution and fines for striking. As it was, it was the employer who was penalized for his failure to comply with the broad aim of the legislation.

Of course, some strikes by women in Glasgow escaped prosecution completely. Thus the dismissal of a female member of the Workers' Union led to a five-day stoppage by fellow-women employed in the cement plant of the Glasgow Iron & Steel Company in May 1917<sup>91</sup>. The women had alleged that the sacked employee had been victimized as a consequence of her trade union activities, and only agreed to return to work on the promise of

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<sup>90</sup>Ibid., February 21, 1917. They had been described by the manager as a "lot of young trollops", to which Sheriff Fyfe, in a retort worthy of the redoubtable Miss Mandy Rice-Davies, observed, "Well, that was his opinion".

<sup>91</sup>LAB2/44/7, "The Workers' Union; Victimization re Dismissal of Miss Isa McGregor by the Glasgow Iron & Steel Company, May 12 and June 27, 1917". Cf., LAB2/260/1, "McNeill & Co. Ltd., Kirkintilloch; Threatened Strike of Women, June 15, 1917". This arose after the employer had transferred his employees to lower-paid jobs following an arbitration award.



arbitration and after a strong patriotic appeal by their union official, Robert Climie. In the event, both sides of the arbitration hearing connived at the decision to hold that the dismissal was "harsh and unjustifiable", but not due to trade union activities. As the arbiter, Professor Irvine, wrote to Askwith<sup>92</sup>,

"It was obvious that a finding that the charge of victimization was established, could accentuate the unrest among the women workers."

So this dimension was conveniently neglected in the arbitration award, surely a back-handed tribute to the solidarity of the women; so much so that even the union apparently balked at providing them with further ammunition to justify a resumption of the disruption.

The most notable strike by women which evaded the close attention of the Glasgow tribunal occurred in the same month of May 1917, and arose out of a wage claim by women employed at one of the filling factories in the city<sup>93</sup>. A remarkable display of militancy, the strike was accompanied by demonstrations by the women outside Central Station, before continuing in George Square, and finally ending up at Glasgow Green. Moreover, it was apparently conducted in defiance of advice from the Workers' Union and was only called off on a promise of arbitration, together with a commitment from the management that no proceedings under the Munitions Act would be taken against the strikers. Similarly, the strike at Beardmore's East Hope Street shell factory in November 1917, following the victimization of four girls accused of going slow, appears to have escaped the net of the Munitions Act. According to

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<sup>92</sup>LAB2/44/7, op.cit.

<sup>93</sup>Glasgow Herald, May 28, 30, 1917.

Hinton<sup>94</sup>, the authorities were fearful that the involvement of the revived CWC would escalate the conflict on a wider scale, and the absence of any strike prosecutions may well have been due to such considerations. However, Beardmore's apparently perverse refusal to countenance, at the outset, any arbitration, together with the women's allegations of victimization, contrary to section 9 of the 1917 Act, meant that neither the Ministry of Labour nor the Ministry of Munitions were sympathetically disposed towards Beardmore's plight.<sup>95</sup> When the question of prosecutions was finally addressed in January 1918, it was accepted by the government departments to have become a dead issue.

Just a few days prior to the above strike, Sheriff Fyfe had adjudicated on a claim by 40 women who had been summarily dismissed from one of the filling factories in the city<sup>96</sup>. They had refused point-blank to cooperate in the introduction of a new scheme of work which involved their handling shell cases. The handling had previously been done by men, but having tried it, the women claimed the work was too heavy for them. For their "misconduct" in refusing to obey the orders of the management, they were sacked without notice. But with the help of Robert Climie of the Workers' Union, they succeeded in obtaining compensation from the tribunal, Sheriff Fyfe holding that their refusal to take on the work was justified in the circumstances.

<sup>94</sup>Hinton, op.cit., p 251.

<sup>95</sup>LAB2/213/IC205, "Munitions of War Acts (1915-1917); Draft of Bill. Minute by Mr. J.C. Miles of the Ministry of Munitions relative to same, November 5, 1917". The file, self-evidently, contains more extensive material than is indicated by its title. It may be observed that although, as Hinton indicates, op.cit., p 251, the NFWW "formally disowned the strike", it was its secretary, Mary Macarthur, who reported it to the Ministry of Labour for arbitration.

<sup>96</sup>Glasgow Herald, November 12, 13, 1917.



In a similar case, a 20-year old girl objected to lifting shells weighing an average  $61\frac{1}{2}$  lbs., which meant that she would be lifting around six tons a day. She had in fact previously been lifting shells weighing 50 lbs.<sup>97</sup>. The employer now offered to provide a labourer to do the lifting. But when that offer was apparently declined, the employer dismissed her without notice, claiming that she had been insubordinate. It was not an opinion with which Sheriff Fyfe concurred, however, and compensation was awarded<sup>98</sup>. Perhaps both in this and in the previous case, a certain amount of "old-fashioned" protectiveness for the greater "delicacy" of women workers was displayed; though clearly Fyfe's own perception of the physical limits to which such women should be pushed was the decisive factor. The decisions appear, nonetheless, to run counter, at first sight, to the strong strand in Fyfe's judicial pronouncements where he more or less consistently sought to uphold managerial discipline. But it must be remembered that he was prepared to buttress the authority of employers only where it was consistent, in his view, with the "national interest". There was no carte-blanche to management to wield the Munitions Act with impunity. Where, however, orders to transfer to other machines were resisted by women, the sheriff was more prepared to follow his predictable course, adding in one case that<sup>99</sup>,

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<sup>97</sup>These were probably 4.5 in. shells which weighed from 45-50 lbs. in the rough and 28-30 lbs. when finished. See Highton, in Drake, op.cit., p 116. Cf., "Tackle or assistance of labourers is, except in a few instances, provided where shells of over 40-50 lbs. in weight are handled; but women, in many cases, complain of the strain of frequent handling of shells of less weight": Kirkaldy, op.cit., p 127.

<sup>98</sup>Glasgow Herald, August 8, 1916.

<sup>99</sup>Ibid., December 9, 1916.

"... if there was any more insubordination after this warning, women must understand that the tribunal would not hesitate to impose the full penalty on them as on men."

Sympathy was also lacking in the case of four women who refused to wear trousers and tunic rather than dresses in accordance with instructions designed to ensure uniformity of wearing apparel in the firm, even though these particular women did not come into contact with any machinery<sup>100</sup>. Similarly, women who objected to scrubbing floors in a projectile factory were rebuffed by the Sheriff in their effort to escape from their reconstituted domestic drudgery<sup>101</sup>.

Thus despite those cases where Fyfe inveighed against the interruption of munitions production, it is clear that not all allegations of women's misconduct were upheld by him<sup>102</sup>. Indeed he even scoffed at employers' suggestions in a couple of cases that the women in question were unscrupulous agitators. Thus in one case<sup>103</sup>, an examiner was said to have endeavoured to stir up strife among her fellow-examiners at the works, and that it was this which justified her dismissal. Pressed directly by Fyfe to prove his allegations, the employer, it seems, failed to discharge the onus. For a compensation order was made against him and in favour of the dismissed examiner. In another case<sup>104</sup>, three

<sup>100</sup> Ibid., December 27, 1916. For the importance of "appropriate" dress, see ibid., August 24, 1916.

<sup>101</sup> Ibid., March 1, 1917.

<sup>102</sup> Cf., case of three girls not guilty of "skiving"; also "doper" not guilty of being "nasty" to head doper: both in ibid., March 1, 1917. But cf., female shipyard worker guilty of fiddling her check-out slip: ibid., February 26, 1917.

<sup>103</sup> Ibid., September 29, 1916.

<sup>104</sup> Ibid., November 1, 1916. Cf., a case where Sheriff Craigie awarded compensation to a dismissed employee who had accused her employer of victimization in that her husband had been concerned in a recent dispute: ibid., October 10, 1916.



girls employed as pleaters making kilts for the Army, were dismissed without notice on the ground that they had tried to organize a strike. They told Sheriff Fyfe that they had circulated a round robin amongst the girls, calling for an increase in wages. The employer construed this action as an attempt to foster discontent by a group of ringleaders, and handed in a written statement signed by other workers in the firm, stating that they had no grievance. Fyfe, however, refused to accept the statement as evidence, as a "piece of paper could not be cross-examined". Instead, he awarded compensation to the girls for wrongful dismissal, though the decision was later reversed by the Appeal Tribunal on a technicality<sup>105</sup>.

It was clearly important for Sheriff Fyfe to stress his impartiality as between employers and workers, whether male or female, in prosecutions before the Glasgow tribunal, where a "higher" interest, ought in his view to prevail. He, therefore, could not lend himself to unsupported allegations of trouble-making in the absence of concrete evidence. The tripartite partnership vital to the war effort had to be above inter-class quarrels, squabbles, whispering, campaigns or conspiracies. Though such a view is no doubt riddled with contradictions, it remained the prime mover in Fyfe's adjudications. Thus given that employers in these cases were unable to substantiate their accusations, given Fyfe's vulnerability to criticism if he had upheld them, and given the wide recognition of women's contribution to the war effort, the decisions in the above cases sensitively reflected Fyfe's powerful adherence to the broad corporatist sentiments of the Munitions Act.

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<sup>105</sup>Ibid., January 5, 1917, Julia McNeill et al. v John Ross & Co. 1917 SMAR 56-60, January 3, 1917. Technically, the firm was outside the scope of the relevant provision of the Munitions Act.

His concern, perhaps especially in the case of women, to contain provocative gestures and actions by foremen which might in turn spark off further disaffection on the shop floor, was also displayed during hearings in Glasgow. For example, in one case<sup>106</sup>, a girl sought a leaving certificate in protest at the strong language used towards her by a foreman. Though he was "quite willing to believe" the foreman's defence that the latter had been "tormented" by the girls in the workshop, nonetheless, declared Sheriff Fyfe<sup>107</sup>,

"There was nothing the Court insisted upon more than that employees must be respectful to their foremen and that foremen must be respectful to the employees. He knew there was a good deal of rough language used. People could not always be on their drawing-room behaviour. With men, it might not be so bad, but the language of which evidence had been given was not language to be used towards girls."

In another case<sup>108</sup>, where two women were being prosecuted for bad time-keeping, there was some indication that the foreman's brusque manner towards them was influenced by ASE hostility to their being employed on general work rather than on one specific job. "It is said you do not like the dilution scheme" Sheriff Fyfe enquired.

"I have to like it", replied the foreman.

"It is more trouble to me certainly, but I give the girls every instruction possible."<sup>109</sup>

Yet despite the firm's directions that the women be treated with "courtesy", Fyfe nonetheless acknowledged that "foremen's tempers are pretty short sometimes". In this case, however, the foreman's blatant resentment and prejudice against women, rather than a domineering

<sup>106</sup> Glasgow Herald, December 20, 1916.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid., December 27, 1916.

<sup>109</sup> Ibid.



attitude to all workers on the part of a foreman armed with the Munitions Act, seems to have been displayed.

The British Association report on the employment of women in Clyde-side munitions establishments, the evidence for which had been collected in May and June 1916, had of course confirmed that women's timekeeping was on the whole better than that of their male counterparts<sup>110</sup>. As we have already seen, welfare supervisors adopted organized procedures to seek out and eliminate the causes of lost time among women munitions workers; and to a greater extent than in the case of men, the likelihood of a prosecution of women for bad timekeeping was remote. Indeed the first such prosecution in Glasgow occurred as late as November 1916 when Sheriff Fyfe expressed in uncompromising terms that women offenders would be treated no differently from men. In that case, a female electric crane driver was told by him that<sup>111</sup>,

"... she was one of many who had the idea that because she was a woman, she could take liberties with the Munitions Act. He wanted such people to understand that if women chose to enter munition works under the dilution of labour scheme and accepted the work hitherto done by men, they must do that work and have no nonsense about it."

But, as on many previous occasions, his bark was worse than his bite. The accused, who, we may assume, had frequently lost time before being prosecuted, was admonished. Of course, Fyfe's remarks were, in reality, directed to a wider audience outside the court room where he could only hope that his threats of dire consequences would be heeded. That Sheriff Fyfe may even have been embarrassed on occasion by the presence of women in the dock may be surmised by his refusal in a compensation

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<sup>110</sup>Kirkaldy (ed.), op.cit., pp 113-4.

<sup>111</sup>Glasgow Herald, November 25, 1916.

case to accept the employer's allegation of bad timekeeping as a justification for the dismissal of certain women without notice. Thus in one case<sup>112</sup>, two women claimed to have been addressed once, but not officially warned, about their late arrival at work. As this statement appeared to have been corroborated by the employer's own testimony, Sheriff Fyfe had no hesitation in holding that the women had been wrongly dismissed and that "something much stronger" than the employer's statement was necessary to uphold the dismissals<sup>113</sup>.

### Conclusion

It is frankly difficult to be certain whether a more indulgent attitude was shown to women than to men by the Glasgow tribunal. The number of cases heard was hardly comparable and the trawl of women's cases cited in this chapter (which probably comes very close to the total of such cases heard in the city) is possibly too thin to justify confident assertions. Yet some hints of positive discrimination in Fyfe's judgments may be detected. First, lowly paid women on munitions work in Glasgow could in general transfer to better paid employment in the same field, in contrast to the widely-publicised experience of a few women applicants elsewhere, and which we noted earlier in the chapter. Second, women's strikes in the district went virtually unpunished, whereas men appeared to be more vulnerable to prosecution and fines, especially in 1916 as we saw in chapter seven. Appearances are, of course, somewhat misleading; for the proportion of workers, whether male or female, prosecuted for striking, relative to the total numbers possible was, as we saw in the same chapter, infinitesimal. Nonetheless, the single

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<sup>112</sup>Ibid., November 20, 1917.

<sup>113</sup>Cf., ibid., October 11, 1916: compensation awarded to two girls dismissed without notice. The employer's allegation of "constant bad timekeeping was rejected by Sheriff Fyfe.



recorded prosecution in the Glasgow area of women strikers at the Coatbridge brick works, has an impact all of its own, as do events such as the Fairfield imprisonments, which no statistical juggling can controvert. Third, employers' allegations of women's insubordination or of misconduct, or of plotting to sow unrest, tended to be treated sceptically by Sheriff Fyfe; if, in fact, they were not simply dismissed out of hand. On the rarer occasions, on the other hand, where the tribunal chairman could be persuaded that employers' complaints contained substance, he would revert to type, and proceed to deliver a lecture threatening that portentous consequences would befall future misdemeanants, irrespective of gender. Yet he would still avoid the imposition of fines on female wrongdoers, consistently favouring admonitions instead. All these factors, it is submitted, suggest that women at the Glasgow tribunal were more favourably and more leniently treated than were men. At first sight, that would hardly be surprising, if it were thought that Fyfe was well aware that women were more likely to be fragile and emotionally scarred by harsh treatment at the hands of the tribunal than men. But in the case of those women prosecuted for bad timekeeping, for example, we must assume that such women would have expected little mercy from the tribunal if, as appears likely, these were the few "incorrigibles" for whom the attentions of the welfare officers were exercised in vain (infra, chapter eight). Yet even such 'ideal' offenders; though unquestionably few in numbers, fared no worse (and indeed just as well) as those women appearing before the tribunal on other matters, where their treatment was extremely favourable compared with men.

Above all, Fyfe's approach to tribunal justice for women seemed to bring out more sharply than usual his commitment to a corporatist/

cooperative application of the Munitions Act. Overall, employers had a less happy time in tribunal confrontations with women munitions workers in Glasgow than they did in the case of men, notwithstanding the generally sympathetic and sensitive enforcement of the leaving certificate provisions by the other three tribunal chairmen before their removal in April 1916. The decisions reached by Sheriff Fyfe, noted in this chapter, whether in the case of strike prosecutions, Ordering of Work prosecutions, including bad timekeeping, compensation cases or leaving certificate applications, point to his concern with upholding production requirements as broadly laid down by the Ministry of Munitions, rather than the private requirements of individual employers per se. He would seek to discredit unsubstantiated managerial revelations designed to label certain female staff as trouble-making agitators. He would warn foremen to moderate their behaviour and language towards women and would impliedly seek to uphold the credibility of the tribunal by dispensing, readily, compensation to women whom management had previously accused of misconduct. Such an exercise in fostering conformativism no doubt assisted, albeit indirectly, the cause of social peace. It also, of course, struck at the autonomy of employers. But under a broadly corporatist legal regime which the tribunal was charged with promoting, such autonomy could expect to suffer serious curtailment. Where women workers were concerned, this curtailment seemed more pronounced than usual.



CHAPTER ELEVENDilution and Restoration of Trade PracticesIntroduction

"The second thing", declared Lloyd George, in announcing the provisions of the Munitions of War Bill 1915, "is the removal of all regulations and practices, or rather, I would not say removal but suspension, during the War... of all these restrictions and practices which interfere with the increase of the output of war materials".<sup>1</sup> Thus with these words, the government left little room for doubt as to its legislative intent. The law was to ensure that no artificial obstacles were imposed by unions or work groups to prevent the maximisation of munitions output. However, there was an alternative view of the government's real motive. For as two post-war observers noted,<sup>2</sup>

"The radicals claim that the [Munitions] bill was passed primarily not so much to give legal sanction to "dilution", as to prohibit strikes and to minimise the leaving of munitions work by individuals."

Indeed, while it may be true that a law might be effective even where it is infrequently wielded in earnest in the courts, as, for example, E.P. Thompson has suggested in respect to the Combination Acts,<sup>3</sup> the legal enforcement of dilution seemed a wayward and unlikely exercise.

Thus what we propose to argue in this penultimate chapter is that both the lifting of restrictive practices in general and the

<sup>1</sup>H.C.Deb., 5th Series, Vol. 72, col. 1199, June 23, 1915.

<sup>2</sup>I.O. Andrews and M. Hobbs, The Economic Effects of the Great War on Women and Children, op.cit., p.55.

<sup>3</sup>E.P. Thompson, The Making of the English Working Class (Harmondsworth: Penguin Books, 1968 edn.), pp 551-3.

imposition of dilution of labour in particular, were incidental concerns of the munitions code; and that Lloyd George's invocation of these "justifications" for legislating, enabled him to exploit a moral panic for more realistic objectives. Indeed Lloyd George seems implicitly to have acknowledged the limits of law as early as the first month of the Act's existence. For even if we leave aside the débâcle involving the South Wales miners, he noted, in a parliamentary debate on the work of his ministry, that,<sup>4</sup>

"We arrived at an agreement with the engineering societies of this country that there should be a complete relaxation of trade union rules and practices in respect of the establishments which are controlled. I regret that up to the present, I cannot make a very satisfactory report, and I should like to appeal to the trade union leaders to bring pressure to bear - such pressure as they can legitimately bring to bear - upon the men in their societies to work the arrangement made with the Government in a more liberal and in a more favourable and satisfactory sense."

Not only is there absent from the above statement any threat to deploy the Munitions Act to force through the lifting of trade practices; there is not even the appeal to the moral force of law to inspire the patriotic British workman to abandon his selfish restrictions on output.

Thus, in the present chapter, we will note the virtual failure of the Act to be invoked directly in the munitions tribunals, in order to underpin the government's policy of dilution of labour. Indeed, the rag-bag nature of the cases germane to the question, scattered throughout this work, merely affirms the poverty of a legislative solution, a conclusion no doubt reached by the government itself once its dilution commissioners set off on their essentially voluntarist voyages of discovery. Similarly, the statute's

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<sup>4</sup>H.C. Deb., 5th Series, Vol. 72, col. 2362, July 28, 1915. Italics added.



inapplicability for the task of resolving disputes over the restoration of pre-war practices once the Armistice had been signed, points to the Act as being better understood as a simple tool of labour discipline, as a deflationary measure and as a symbolic gesture of determination by the government that it be seen to be "doing something positive" about strikes and restrictive practices. If not actually irrelevant to the removal of the latter, its erroneously perceived threat to skilled workmen nonetheless provided a focal point for opposition which only careful and protracted voluntarist negotiations could wear down.<sup>5</sup>

Thus, as with its provisions dealing with factory discipline, strikes and leaving certificates, the Act's identification with the question of removal of trade practices may possibly have rendered it, on balance, dysfunctional in respect to the government's overall production objectives. In short, the Act may well have generated more industrial conflict than it prevented, and may therefore have inhibited, rather than aided, the ministry's task of increasing munitions output. The problem of evaluation of the code as a whole is however intricate, and we will return to the question in the final chapter. At this stage, however, we will develop in more detail our argument that the Munitions Act was of marginal substantive importance to the government's campaign to further dilution in the workshops. In support of this proposition, we will seek to utilise the findings of "labour process" students, both modern writers

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<sup>5</sup>Indeed the use of draconian regulations under DORA to deport the Clyde shop stewards did not in fact address the obstacles to dilution negotiations, since those deported were previously prepared to engage in such negotiations. The fundamental disagreements were in relation to safeguards against exploitation by private employers; and these safeguards, not dissimilar to those in John Muir's proposal to Lloyd George in December 1915, were obtained after the deportations.

and those contemporary with the historical events, in order to explain this outcome.

### Dilution

In an important contribution to the debate over the dilution "struggle" on Clydeside, Alastair Reid has recently argued that it is no longer tenable to identify the "trauma of dilution"<sup>6</sup> as the "central issue in wartime disputes".<sup>7</sup> Demonstrating that in the shipbuilding sector, only 1,000 women were introduced into the yards, scarcely at all replacing men,<sup>8</sup> Reid suggests that in engineering, also, the influx of large numbers of women did not in fact pose a threat to the status of existing skilled craftsmen. While we need not concern ourselves with repeating the complex reasons advanced by Reid to support his analysis (for it is not our task to document the history of the dilution programme), we may observe that he interprets the government's campaign in shipbuilding at least, as "little more than morale-boosting propaganda".<sup>9</sup> In engineering, similarly, he concludes that,<sup>10</sup>

"The strategies of ASE officials, of local shop stewards and of revolutionary militants were therefore all based on confidence rather than on the shocked reaction to a traumatic threat."

Yet engineers may nonetheless have based their responses on a "worst scenario" assumption, whilst quietly confident of their ability to weather the storm. That, however, did not dispose them to take any

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<sup>6</sup> Alastair Reid, "Dilution, Trade Unionism and the State in Britain During the First World War", op.cit., p. 12.

<sup>7</sup> Ibid., p.1.

<sup>8</sup> Cf., Scott and Cunnison, op.cit. pp 86-7, who pointed to the limited, but nonetheless wide-ranging, penetration of women into the Clyde shipyards.

<sup>9</sup> Reid, op.cit., p.6.

<sup>10</sup> Ibid., p.11.



chances, nor to refuse to defend entrenched positions. Why should they? The threatened presence of women in their workshops performing even the less skilled tasks did represent a diminution in the orbit of work which craftsmen customarily performed. There were, moreover, enough technological innovations during the war in such areas as screw gauge manufacture, to render craftsmen less than indispensable. These were no idle threats to their livelihood, as the examples from the few proceedings under the Restoration of Pre-war Practices Act, discussed later in this chapter, indicate. Nonetheless, it is reasonable, in the final analysis, to conclude that dilution was, for the most part, no more than a symbolic rallying cry of a government continuously pressed by the military to multiply munitions output.

Moreover, the brief but careful account of wartime dilution offered by Charles More emphasises that on the Clyde, the "complete substitution of women for skilled men was only rarely effected".<sup>11</sup> Indeed, the Ministry of Munitions itself considered in 1916 that there had been "no clear cases where a woman was doing all the work customarily done by a fully skilled tradesman".<sup>12</sup> In the exceptional case, it was, as an example from Beardmore's illustrated, technically possible for semi-skilled and unskilled workers, male and female, to undertake the entire repertoire of tasks customarily performed by skilled craftsmen. But in this example, 88 fitters, turners and machinemen had been replaced by 600 other workers. In other words, not only had extreme sub-division of labour taken place which required many times the numbers of staff previously employed in order that the entire work be performed. But, were it not for the exigencies of war, such manpower deployment would have been economic suicide

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<sup>11</sup> Charles More, Skill and the English Working Class, 1870-1914 (London: Groom Helm, 1980), p.30.

<sup>12</sup> Ibid.

for the employers, a point which they readily acknowledged in justifying the continued employment of the craftsman after the war, and of the maintenance of his rate during it. Thus whenever women and lesser skilled males replaced an equal number of skilled fitters or turners, they were invariably, as at Weir's of Cathcart, put on to scraping, rough turning and boring, that is, on to the less precise areas of the craftsman's all round duties;<sup>13</sup> indeed precisely the nature of the work undertaken at Beardmore's Dalmuir yard by John Cairney, whose unsuccessful claim to the craftsman's rate we examined in chapter seven.

Thus, as More has concluded,<sup>14</sup> not only did women scarcely ever perform all the work customarily undertaken by skilled men. But even the up-grading of semi-skilled men to skilled status seems to have amounted to only four per cent of all changes in working practices registered with the Ministry of Munitions.

Yet the picture presented above does, of course, dwell on the most visible manifestation conjured up by a campaign of dilution, that is, upon the rapid and expansive deployment of women in the metals section of industry, hitherto lightly penetrated by female labour. But dilution, as more widely understood, entailed more than the replacement of skilled craftsmen by women and lesser skilled males. Thus the preoccupation by Reid and More with these aspects tends to obscure such additional factors as the interchangeability of classes of workers across craft lines as well as the suspension of internal lines of demarcation; the deployment of technological innovation, including the introduction of pneumatic, hydraulic and electric tools; and the wide variety of other changes in working

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<sup>13</sup>Ibid.

<sup>14</sup>Ibid., pp. 30-1.



practices not involving any of the above.

Thus the "Transformation of Industry", as Sidney Webb described the process, was extended not only to the,<sup>15</sup>

"... relationship of the operatives to the machines and of the various grades and classes of operatives to each other; and, above all, as regards the grades, classes, ages, trades and sex of the operatives employed".

It extended also to the speeding up of production, and to the abandonment of traditional notions respecting "a fair day's work", or respecting customarily agreed times for different jobs. Thus, extending far beyond the machine question, the tidal wave of changes ultimately swept into its path,<sup>16</sup>

"... the hours of labour, mealtimes, overtime, and holidays; the methods and rates of remuneration; the conditions of engagement, suspension and dismissal; [and] the disciplinary code with its fines and other penalties."

Thus the dilution question also pushed into prominence both the explosive question of wage guarantees in the face of relaxation of restrictive practices, and also the controversial matter of the introduction of non-union labour into union shops.

It would be misleading, therefore, to conceive of the dilution campaign solely in terms of the replacement of skilled craftsmen by lesser skilled males and females. Indeed, it is more appropriate to employ the terminology, the "lifting of pre-war practices" (by analogy with the Restoration of Pre-War Practices Act 1919), though it should not, of course, be thought that changes in working practices did not also take place prior to the war as G.D.H. Cole and Hinton have clearly emphasised.

Thus if it is true that a narrowly conceived dilution campaign

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<sup>15</sup>Sidney Webb, The Restoration of Trade Union Conditions (London: Nisbet & Co., 1917), p.27; Cf., review in the Shipbuilder, Vol.17, September 1917, pp. 81-4.

<sup>16</sup>Webb, op.cit.

possessed many of the characteristics of a substantively empty moral crusade, it remains the case that changes in working practices which directly impinged on the position of skilled labour were nonetheless implemented during the period of the war.

In their propaganda campaign, government spokesmen, surely in the face of their own genuine beliefs, expressed their determination to exploit to the full, the rigours of the Munitions Act in pressing home their dilution policy. Thus Lloyd George told the Commons in December 1915 that,<sup>17</sup>

"... the law must be put into operation by some body, and unless the employer begins by putting on unskilled men and women to the lathes, we cannot enforce that Act of Parliament. The first step, therefore, is that the employer must challenge a decision upon the matter and he is not doing so because of the trouble which a few firms have had. But let us do it".

Similarly, Lynden Macassey, the Clyde dilution commissioner, told the Clyde shipbuilders in March 1916 that the government's emergency powers were in readiness to underpin the dilution campaign. Thus,<sup>18</sup>

"... all customs opposed to the introduction of unskilled and female labour, and therefore restrictive of output, would be abrogated, their maintenance being contrary to law".

What is manifestly clear, however, is that despite such bold words, and despite the Clyde deportations, the Munitions Act's provisions, setting out the legal authority for dilution as broadly defined, were scarcely ever wielded in earnest, while the prosecution of those who struck against changes in working practices was similarly a rare event. The strikers at Lang's of Johnstone in February 1916, a focal point for the government's dilution campaign, went unpunished,<sup>19</sup> though

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<sup>17</sup>Cited in C.J. Wrigley, David Lloyd George and the British Labour Movement, op.cit., p.153.

<sup>18</sup>Cited in Reid, op.cit., pp. 4-5.

<sup>19</sup>Hinton, op. cit., p. 146; McLean (1983), op.cit., p.68.



the prosecution of the "deportation strikers" a few weeks later<sup>20</sup> was no doubt seen by the authorities as a blow struck at the fomenters of unrest in general and at the opponents of dilution in particular.

The legislative authority for the lifting of restrictive practices was contained in section 4(3) of the 1915 Act and stated,

"Any rule, practice or custom not having the force of law which tends to restrict production or employment shall be suspended in the establishment, and if any person induces or attempts to induce any other person (whether any particular person or generally) to comply, or continue to comply, with such a rule, practice or custom, that person shall be guilty of an offence under this Act."

Thus the word "dilution" is conspicuous by its absence from the statute. In its place is the broader concept of a restrictive "rule, practice or custom" which indeed embraced dilution, but which went beyond the replacement of skilled, by other, workers. To section 4(3) had to be added Schedule II to the Act, which embodied the Treasury Agreement commitment made by the government to the unions signatory to the agreement. By section 4(4) of the Act, employers were now deemed to have undertaken to comply with the provisions of Schedule II. Thus it was laid down that any departures from pre-war practices, in respect to which "due notice where reasonably practicable" had to be given to the workforce, were to be only for the duration of the war and that the post-war position of workers and trade unions was not to be prejudiced by such wartime changes. Wage guarantees in the case of displacement of skilled labour were also given. Thus semi-skilled men introduced to a higher class of work were entitled to the usual time and piece rates of the

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<sup>20</sup>Chapter four (supra).

district for that class of work. More complex was para.5 of Schedule II which declared that,

"The relaxation of existing demarcation restrictions or admission of semi-skilled or female labour shall not affect adversely the rates customarily paid for the job. In cases where men who ordinarily do the work are adversely affected thereby, the necessary readjustments shall be made so that they can maintain their previous earnings."

There was certainly some fudging at the margins, particularly in the cases of unskilled workers who were not mentioned in the schedule, and also in the case of female workers on time rates whose work did not include the more complex operations which skilled men continued to perform (most notably, the setting-up tasks). Nonetheless, the clause purported to guarantee no loss of earnings for skilled men. It also sought to ensure the customary rate for semi-skilled males on skilled work; though whether, in the case of diluted labour, the skilled rate applied to all the tasks customarily undertaken by skilled craftsmen, even when performing work of a lesser standard, was hotly debated. Finally, the customary rate was guaranteed for female piece-workers, as well as for female time-workers in the uncommon event that they were undertaking all the work which a skilled man would have performed prior to, or during, the war. The astonishing thing, however, is that these tortuous provisions, metaphorical minefields in their complexity, occasioned scarcely any tribunal proceedings. Their elucidation, if that is the appropriate description, was, overwhelmingly, the responsibility of other administrative tribunals and negotiating committees. Indeed, a succession of wages orders issued throughout the war sought to operationalize these general guidelines set out in L.2 and L.3 by relating them to those workers employed in different trades.<sup>21</sup> While the munitions

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<sup>21</sup>For details, see OHMM, Vol. V, Parts II and III, passim.



tribunal enjoyed some limited involvement in the interpretation of these orders (chapter seven, infra), the promotion of statutory wage regulation was in fact conducted by bodies other than this tribunal. Thus whether negotiations were conducted voluntarily or whether wage differences became the subject of arbitration proceedings before the Committee on Production, single arbitrators, the existing industry machinery or, from 1916, the special arbitration tribunals for both women and semi-skilled and unskilled men, the volume of such business settled without resort of legal adjudication by the munitions tribunal was staggering,<sup>22</sup> a testimony, surely, to the preference for arbitration to adjudication, which the unions' resourceful exploitation of the munitions tribunal for instrumental purposes (chapter five, infra) in no way refutes.

We have sketched the legislative provisions in respect to the lifting of trade practices in more detail in this chapter than we have undertaken for other statutory measures which have been examined. The reason is, principally, to indicate the tortuous legislative route by which dilution was officially sanctioned. But second, it is to indicate that obstacles to the statutory enforcement of dilution were, in part, the product of the idiosyncratic drafting employed and of the protracted procedures to be followed in ascertaining whether, under section 4(3), a "rule, practice or custom" did in fact "tend ... to restrict production or employment". Thus in the first instance, the question was one for the Board of Trade to settle or for the Board to refer to arbitration. Second, if an affirmative answer were given, then it was necessary to identify that a person, whether employer, trade union official, employers' association representative, or indeed anybody else, such

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<sup>22</sup>The comprehensive list of arbitration proceedings is published in the 12th Report of Proceedings Under the Conciliation Act 1896 etc., P.P. 1919, XIII (391), 1.

as a journalist or political activist, "induced" another to comply with the rule, practice or custom. But as Lynden Macassey pointed out in April 1917,<sup>23</sup> section 4(3) was largely inoperative, since an arbiter might conclude that a practice was restrictive without being able to suggest what should replace it. Moreover, if both employer and employees failed to refer the matter to the Board of Trade, then there was no machinery to enable a government department, in particular, the Ministry of Munitions, to do so. Macassey's suggestions to remedy the situation came at the wrong time, in the midst of the delicate negotiations over the extension of dilution to private work, and were therefore not taken up. One wonders, indeed, whether the cumbersome procedure was not deliberately framed in order to confine initiative to the employers and workers directly involved, thereby maintaining an element of voluntarist autonomy, while limiting the intrusiveness of the state to more promising spheres of labour regulation.

In the event, the direct enforcement of section 4(3) was almost nil, and indeed was principally used, though not always successfully, against employers.<sup>24</sup> Thus we examined in chapter one the case of Guillet v E.H. Bentall & Co. Ltd., in 1916, in which the employer's pre-war practice of refusing to employ trade unionists was held to be an unlawful restrictive practice in wartime.<sup>25</sup> Such a method of proceeding against Messrs Tweedales & Smalley, the Rochdale textile engineering firm at the centre of the troubles in 1917 over the

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<sup>23</sup>OHMM, Vol. V, Part I, p. 59.

<sup>24</sup>For an abortive attempt to use section 4(3) against its supposed, intended targets, that is, against obstructive workers, see MUN5/98/349/100, "Prosecution of Workmen Before General Munitions Tribunals, December 6, 1915" (charge against 3 Newcastle workers dismissed, though they were found guilty of Ordering of Work offences).

<sup>25</sup>Cf., the case of the Loughborough employer, also discussed in chapter one.



extension of dilution to private work was in fact canvassed by J.C. Miles, at the Ministry of Munitions.<sup>26</sup> This approach was, however, dropped in favour of proceeding under a different provision of the Munitions Act. Similarly, in another case, the employer's practice of suspending men for trivial offences was condemned as a restriction on output. The only difficulty was that the employer in question was the Royal Small Arms Factory at Enfield, which, to the regret of the Metropolitan tribunal chairman, Sir Robert Wallace, was immune from prosecution on the ground that "the King can do no wrong".<sup>27</sup> Finally, the only Scottish case under section 4(3) which we have been able to discover arose in Motherwell, in the wake of the abolition of the leaving certificate scheme. In this incident, the ASE lodged a complaint that the managers of two firms, the Lanarkshire Steel Company and Messrs Marshall, Fleming & Co., without the knowledge of their foremen, had agreed among themselves not to hire each others' staff once the men were free to move.<sup>28</sup> The matter had in fact become academic by the time of the hearing, for the Ministry of Munitions had intervened to ensure that the two engineers in question could take up the new posts offered by the foreman of one of the companies. But the ministry was no doubt aware at the prospect of further unrest being stirred up by the behaviour of a number of employers' federations in England who continued to advise members to refuse to hire labour without the previous consent of their employers.<sup>29</sup> Therefore, the Ministry of Munitions added the prosecution of the above employers to the forceful guidance

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<sup>26</sup>OHMM, Vol. VI, Part I, p. 104. See also note 34, *infra*.

<sup>27</sup>ASE, Monthly Journal and Report, November 1917, p.38.

<sup>28</sup>Glasgow Herald, November 14, 1917.

<sup>29</sup>ASE, Monthly Journal and Report, November 1917, p.32 (Yorkshire); *ibid.*, p.33 (Manchester); Glasgow Herald, November 5, 8, 1917; *cf.*, ASCM, 60th Quarterly Report, September 1, 1917, p.2.

it swiftly issued to all employers, to the effect that such practices were contrary to government policy and instructions.<sup>30</sup> Contrary to government wishes, such practices may well have been. But contrary to the law, apparently they were not. For Sheriff Fyfe could find no sufficient evidence to establish that an infringement of section 4(3) had occurred.<sup>31</sup> Thus yet another illustration of the substantive impotence of the provision was added to its sorry history.

Indeed, when G.D.H. Cole had commented in November 1915 on the progress of the Munitions Act, he was scarcely premature when he noted that,

"It will be remembered that the Act was passed and secured assent mainly for two reasons. It was urged that strikes on war-work must be prevented, and that trade union rules limiting production must be abrogated for the period of the war. It is, to say the least of it, significant that neither of these points bulks at all large in the cases that have arisen under the Act. There have been hardly any strikes, and, in a careful survey of the available cases, I have only found a single case which turns on the refusal to abrogate trade union rules, and this is identical with one of the very few strike cases. In short, while the Act is in daily use in every town where munitions are made, it is being used almost entirely for purposes other than those which were used as arguments for its passage."<sup>32</sup>

We have, of course, to remember that the dilution question, as well as the more broadly defined issue of the removal of restrictive practices, did arise from time to time in tribunal hearings in Glasgow. Yet the most significant feature was the infrequency with

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<sup>30</sup> ASE, Monthly Journal and Report, November 1917, p.20; AIMS, Monthly Report, December 1917, p.242. Cf. the prosecution of the Rolled Steel Forge Company, Wishaw, for having granted a wage increase; chapter seven, infra.

<sup>31</sup> Glasgow Herald, November 28, 1917.

<sup>32</sup> Nation, November 20, 1915. Italics in original. The case to which he referred was probably the boilermakers' strike at Thorneycroft's of Southampton. See chapter one, infra.



which the matter was considered in legal proceedings. Thus we have seen in previous chapters the limited extent to which prosecutions were used to circumvent opposition to compulsory overtime or to the employment of non-unionists, while the dilution scheme was advanced scarcely at all by applicants as a justification for the grant of leaving certificates. Moreover, wage disputes concerning the interpretation of L.2 and L.3 were confined to the occasional munitions tribunal hearing, while even the principled opposition to the employment of women in the place of men, which was taken to the extent of law-breaking, was reflected, so far as can be gathered, in the prosecution of a single workman at a steel works, rather than at an engineering shop. Indeed, it is not at all clear from the facts as published in that particular case (chapter seven, infra), that there was indeed any dilution of skilled labour, as narrowly conceived, as a result of the introduction of women into Stewart & Lloyds. Moreover, it is not absolutely beyond dispute that the workman involved was skilled, though in all probability, he was likely to have been a time-served operative.<sup>33</sup>

Thus while it remains possible that a different pattern of tribunal proceedings occurred elsewhere, resulting in forensic skirmishes over restrictive practices mediated through the vehicles of Ordering of Work prosecutions, wage complaints or leaving certificate applications,<sup>34</sup>

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<sup>33</sup>Glasgow Herald, July 8, 1916.

<sup>34</sup>Cf., ASE, Monthly Journal and Report, May 1916, p.36, concerning the subsequently withdrawn prosecution of a Sheffield engineer for having refused to perform work on certain lathes; ibid, June 1916, p.36 re prosecution of five Welsh engineers for having refused to take on work abandoned by ship's engineers. The ASE complained both of failure to consult before changes in working practices were implemented and also that the tribunal had no jurisdiction until Board of Trade arbitration had been decided. The prosecution was therefore adjourned, presumably sine die. Finally, the exceptional tribunal prosecution of Messrs Tweedales & Smalley in fact took place under section 4(4) and Schedule II, para. 7 to the Act. This concerned the employer's duty to give due notice of changes, wherever practicable, and also opportunity for local consultation with his workmen. The dispute, as is well known, arose when craftsmen were ordered by the firm to instruct women previously

the national picture in respect to the implementation of section 4(3) corresponded to that obtaining for Glasgow. Thus whether or not dilution was a pressing matter of substance, the express statutory prohibition on restrictive practices was, as Askwith admitted,<sup>35</sup> "...soon found to be of small value". If indeed empty vessels did make the most noise, then section 4(3) was undoubtedly its legal personification.

#### Restoration of Pre-War Practices

In certain respects, the same could also be said of the trade union campaign demanding the restoration of trade union practices abandoned after the Treasury Agreement. Though a matter which deserves extended consideration as a separate topic of its own, we can sketch out the bare essentials relevant to the question of legal enforcement. Thus throughout the years of the Munitions Acts, the insistent cry went up from nearly all quarters of the labour movement that the government honour its pledge to restore such practices on the cessation of hostilities. For example, the Labour Party Annual Conference in 1917 resolved,<sup>36</sup>

"(i) That this Conference reminds the Government that it is pledged unreservedly and unconditionally, and the nation with it, in the most solemn manner, to the restoration after the war of all

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<sup>34</sup>(cont'd) on shell work how to operate grinding machines on ring spindles, so as to enable commercial work to be undertaken. The firm were fined a total of £35, plus £21 costs. The fullest account of the tribunal proceedings is in OHMM, Vol. VI, Part I, pp 102-6.

<sup>35</sup>Lord Askwith, Industrial Problems and Disputes, op.cit., p.391. He went on to argue that, "In practice, employers tried to make use of this section..."; ibid. This may, of course, have been true in respect to "pre-trial" procedure. The tribunals, however, as we have shown, had little part to play in this activity.

<sup>36</sup>Labour Party, Annual Report 1917, p.104. Cf., TUC Annual Congress 1916; cited in Glasgow Herald, September 7, 1916; ILP, Annual Conference Report 1917, p.45 which allied the employers' attempts to prevent restoration with their proposal to repeal the Trade Disputes Act. See note 37 (infra).



the rules, conditions and customs that prevailed in the workshops before the war; and to the abrogation, when peace comes, of all the changes introduced, not only in the national factories and the 4500 controlled establishments, but also in the large number of others to which provisions of the Munitions Acts have been applied.

(ii) That the Conference places on record its confident expectation and desire that if any employers should be so unscrupulous as to hesitate to fulfil this pledge, the Government will see to it that, in no industry and in no district, is any quibbling evasion permitted of an obligation in which the whole Labour Movement has an interest..."

As is often the case, however, what was omitted from the resolution was far more significant than what was included. For wholly absent was any acknowledgement that restoration might not, in many instances, be achievable. Thus employers such as the Employers' Parliamentary Council were now insisting that the technological revolution inaugurated by the war and entailing the introduction of new plant, machinery and methods of manufacture, was permanent. Secondly, they argued, the enhanced level of output and efficiency during the war, brought about, in part, by the removal of trade union restrictions, was also crucial to Britain's post-war struggle for overseas markets. The restoration of trade union customs was therefore viewed as incompatible with Britain's post-war economic survival.<sup>37</sup>

It was, perhaps, because the skilled branches of the labour movement during the war, far from revelling in their "confidence", shared a deep concern for the future, that their campaign for restoration was pursued so vigorously from 1916. The constant reference to the government pledges by such bodies as the Fabian

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<sup>37</sup> Cf., Nation, January 27, 1917, referring to a series of articles in The Times. The Glasgow Herald ran a similar series of articles in April 1917 entitled "Future of Industry". For the Employers' Parliamentary Council, see ibid, February 12, 1917, and for a critique of their reactionary outlook, see New Statesman, February 17, 1917, pp 461-2. For the observations of a committee of Scottish engineers, shipbuilders and steelmakers, see Glasgow Herald, April 10, 1917.

Research Department, which also ran a series of conferences on restoration, is one symptom of this disquiet.<sup>38</sup> Another is the series of pamphlets published by the Joint Committee on Labour Problems after the War, which dealt with the practical steps which trade unions ought to take to ensure the adequate recording of workshop changes.<sup>39</sup> For there is little doubt that the labour movement entered the post-Armistice period in a state of uncertainty. Indeed, it had already publicly begun to concede that the principle of "full" restoration was misconceived; most significantly, when the Labour Party at its 1918 conference in June added the following clause to the resolution on restoration which it otherwise passed in terms virtually identical to that in 1917 (supra):<sup>40</sup>

"(v) The Conference, finally, urges that if it is considered that some of the rules, conditions and customs are, in the industrial reorganisation that is contemplated, inconsistent with the highest development of production, or injurious to other sections of workers, it is for the Government, as responsible for the fulfilment of the pledge, to submit for discussion to the Trade Unions concerned, alternative proposals for securing the standard wage and normal day, protecting the workers from unemployment, and maintaining the position and dignity of the crafts."

Thus it was one thing for the likes of J.R. Richmond, joint managing director at Weir's of Cathcart, just six weeks after the Armistice, to remark that,<sup>41</sup>

"The main question is whether, from the aspect of the future well-being of the nation, apart from temporary political kudos,<sup>42</sup> such a restoration is desirable or even practicable."<sup>43</sup>

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<sup>38</sup> Fabian News, Vol. 27, November 1916, p.46; ibid, Vol. 28, December 1916, p.2; ibid, January 1917, p.6; ibid, February 1917, p.11; ibid, April 1917, p. 19; cf., ASCIJ, Journal, December 1916, pp 776-7.

<sup>39</sup> See note 64, infra.

<sup>40</sup> Labour Party, Annual Report 1918, p.61.

<sup>41</sup> Glasgow Herald, December 28, 1918.

<sup>42</sup> A reference, probably, to Lloyd George's Caxton Hall meeting with trade unions and employers. See ibid, November 14, 15, 21, 1918.

<sup>43</sup> According to the historian of Weir's, employers preferred to return to the status quo ante bellum rather than confront the militancy of skilled engineers who would struggle to resist the introduction of new mass



But when J.R. Clynes in October 1918 questioned whether a "complete restoration of all pre-war conditions" was possible,<sup>44</sup> or when George Barnes, as a member of the War Cabinet, told a Glasgow audience the same month that there were "some aspects of the matter which could not be restored. They could not eliminate knowledge",<sup>45</sup> the legislative demand for watertight safeguards which the Munitions Act fell far short of providing, assumed a different role. The intention was no longer simply to employ the mechanism of a statute, eventually passed as the Restoration of Pre-War Practices Act in August 1919, directly to bring about desired changes. Instead, the legislation was now to be viewed both as a virility symbol or rite de passage and, more directly, as a bargaining counter which the unions could throw into the negotiating arena wherein the post-war employment settlement could be hammered out. Thus Richmond, speaking in February 1918 to the Glasgow Philosophical Society, considered it probable that<sup>46</sup> "the right to complete restoration would be utilised in bargaining for specific concessions and terms of employment." Ten months later, he was of the same opinion. The trade union insistence upon restoration was intended "not as an advantage in itself, but purely as a bargaining weapon in the final settlement" of terms with the employers.<sup>47</sup> As the Garton Foundation, the joint body of leading employers and trade unionists advised,<sup>48</sup>

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43(cont'd) production lines to replace those worn out during the war. He therefore concluded that "There was thus, in the West of Scotland, if not elsewhere, a kind of Ludditism in engineering: surely a unique example of a whole industry deliberately putting itself at a disadvantage against less conservatively-minded foreign competition." See W.J. Reader, The Weir Group: A Centenary History, op.cit., pp 83-4. Such an interpretation does, of course, conflict with that of Cole and More.

<sup>44</sup> Glasgow Herald, October 31, 1918. As a representative of the unskilled, he no doubt suffered from split loyalties.

<sup>45</sup> Ibid., October 21, 1918.

<sup>46</sup> Ibid., February 5, 1918.

<sup>47</sup> Ibid., December 28, 1918.

<sup>48</sup> Garton Foundation, The Pledges to the Trade Unions, reprinted in Tracts for the Times (1921), p.53.

"It is therefore urgently necessary that the Government should at once introduce and secure the passage of a Bill providing for the redemption of war pledges, not in order that all pre-war customs may be actually restored, but in order that the ground may be cleared for the negotiation of an after-war settlement on broad and comprehensive lines."

It was a sentiment with which both Clynes and Barnes (supra) concurred, with Barnes, in particular, prepared to compromise the demand for restitution in exchange for "the standardisation of wages, shorter hours of labour and a voice in determining workshop conditions for all working men and women".<sup>49</sup>

The view within the Ministry of Labour, which was now responsible for the administration of the 1919 Act, corresponded, not surprisingly, to this assessment. Thus, commenting on the opinion of Sheriff Fyfe that a prosecution commenced in September 1920 should not be entertained on account of undue delay by the union in instituting proceedings, a senior Ministry of Labour official observed,<sup>50</sup>

"Now the trade union probably want a ruling which will enable them to negotiate on fair terms with the employer for the fixing of wages in the future. This in essence was the intention of the Act. It was not meant to set back the organisation of industry to pre-war conditions, but to ensure that when the trade unions met the employers to discuss future conditions, their bargaining power would not be weakened by the introduction of machinery worked by semi-skilled labour owing to the exigencies of the war..."

The truth was, as the New Statesman recognised,<sup>51</sup>

<sup>49</sup> Glasgow Herald, October 21, 1918, Over a year earlier, "he thought that, "The best thing to do with these pre-war conditions", which he looked upon with "loathing and disgust", was to "barter them for better conditions". See ibid, May 31, 1917.

<sup>50</sup> LAB 2/676/36, "Restoration of Pre-War Practices Act: Mackay v J.B. Fraser & Co. Ltd; Proceedings before Glasgow Local Munitions Tribunal and Scottish Appeal Court, December 14, 1920; memorandum by W. Eady, November 20, 1920". See infra.

<sup>51</sup> New Statesman, May 31, 1919, p.207.



"... the Bill as a whole is not so much a solution of the problem as a necessary clearing of the ground in preparation for a solution. No Act of Parliament can do more than this. It is not for Parliament to legislate as to the changes in industrial conditions, often of the most detailed and technical character which have been made necessary by the war. These are matters with which only the various industries themselves can deal."

Indeed, the Act itself provided that the obligation to restore could be voluntarily departed from, where the trade union and employer concerned preferred to substitute a new set of arrangements in place of the pre-war conditions. It was in fact a reflection of the revived voluntarist tradition in industrial relations, which had, for the duration, been temporarily laid aside (even if, in the event, there was yet life in the old dog during the war). But it was also a recognition of the reality that "an exact and literal restoration of pre-war practices in every case"<sup>52</sup> was simply impracticable.

Thus for the moment, trade unionists appeared to be in a position to pitch strong though attainable demands at their employers in the knowledge that their abrogation of what the Webbs had called the "Doctrine of Vested Interest",<sup>53</sup> had, paradoxically, enhanced rather than diminished the power, status and size of trade unionism during the war.<sup>54</sup> In short, the Restoration Act, when finally enacted,

<sup>52</sup>Ibid.

<sup>53</sup>S. and B. Webb, Industrial Democracy, op.cit. Cf., Sidney Webb, The Restoration of Trade Union Conditions, op.cit., pp 31-21.

<sup>54</sup>Thus the 40 hours movement, involving the George Square riot in Glasgow in January 1919, could well be interpreted as part of the "bargaining" surrounding the question of the restoration of pre-war practices. Yet with hindsight, it might be argued that Clynes and Barnes were shepherding trade unionists up what proved in the long run to be a blind alley (once the recession of late 1920 had set in). As Harold Laski remarked in early 1919, de Tocqueville had seen the possibility that future generations of workers would exchange their political power for material comfort. "That", said Laski, "is the greatest danger before us. Shorter hours and higher wages may bring that mood which avoids the most vital of our problems - the construction of a representative government in industry and its revivification in politics". Moreover, if, as was proposed in respect to American labour reconstruction, there was a "regrettable reliance upon governmental paternalism", this led to the unsatisfactory result that, "Men seem anxious to have the

had very little to do with the restoration of pre-war practices, but much to do with a return to the spirit of voluntarism. Thus whether the impact of the statute was limited because restoration had already commenced as soon as the Armistice had been signed, or whether, as seems more fashionable to argue, there had been little fundamental change (and therefore little to restore)<sup>55</sup>, the Act was, in effect, a product of mere trade union shadow boxing. Of course, as Cole pointed out,<sup>56</sup>

"This is not to say that the precautions taken by the trade unions during the war period were unnecessary for the safeguarding of the skilled workers..."

For the unions' vigorous campaigning ever since the Treasury accords had persuaded the employers after the war to follow the "line of least resistance by allowing trade union customs to be restored".<sup>57</sup> Indeed, Cole implied, any sign of trade union weakness or indecision in pressing the point might well have been construed (correctly?) by employers as evidence for more fundamental inadequacies, prompting the latter, where feasible, to stand firm by their less skilled and female labour.

<sup>54</sup> (cont'd) benefit of the state without the trouble of conquering it".

See H.J. Laski, "British Labor Reconstruction Proposals and the American Labor Attitude", Proceedings of the Academy of Political Science, Vol. 8, February 1919, pp 193-7, at p.197.

<sup>55</sup> In fact, both arguments are valid. Thus according to G.D.H. Cole, "Restoration took place, in the majority of instances, considerably before the final passing into law of the Restoration of Pre-War Practices Act". See G.D.H. Cole, Trade Unionism and Munitions, op.cit., p. 195; while, in the words of Charles More, op.cit., pp 33-4. "The force of law given to the restoration of pre-war practices, the immediate pressure of demand, and the desire to avoid labour trouble, were no doubt all factors in the withering away of dilution; but the main reason was simply that the methods of production in force during the war were not appropriate to much of the peacetime output." Cole, of course, pointed this out himself.

See Cole, op.cit., pp 213-4.

<sup>56</sup> Ibid., p.196.

<sup>57</sup> Ibid.



Tribunal Proceedings

In October 1920, a senior Ministry of Labour official noted that,<sup>58</sup>

"This Act has worked with surprising smoothness... The main purpose for which the Act was passed has now been practically secured. The fact that the EEF and the AEU are shortly to begin negotiations on various questions, including the manning of automatic machines,<sup>59</sup> which is, of course, the essence of the Act, suggests that the Unions regard the question as one more or less open."<sup>60</sup>

Certainly the statistics bear out the limited impact of the 1919 Act. Thus out of a total of 30,396 recorded departures throughout the whole country (10,000 of them in Scotland), only 24 complaints of employers' failure to restore were submitted for tribunal adjudication. Of these, trade unions were successful in just five cases, five claims were withdrawn (usually when the employer conceded the claim) and the remaining cases were lost.<sup>61</sup> However, it was in fact just as well from the trade unions' point of view that the Restoration Act was virtually redundant so far as munitions tribunal proceedings were concerned. For the decision in one case which was taken to the English Appeal Tribunal effectively demolished whatever efficacy the measure purported to possess. The case, the details of which justify an extended discussion, involved a complaint by Arthur Taylor, the ASE Yorkshire district delegate, that a firm of Halifax engineering toolmakers, Messrs Smith, Barker & Willson, had continued to employ female labour on fitting, turning, slotting

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<sup>58</sup> LAB 2/676/34, "Restoration of Pre-War Practices Act 1919: Period of Validity of Act; Solicitor's Opinion; W. Eady to J.A. Dale October 4, 1920." Much of this file is concerned with the question of alleged delay in the prosecution of the Glasgow firm of James B. Fraser & Co., Phoenix Park Sawmills, accused by the Amalgamated Society of Woodcutting Machinists in September 1920 of retaining women on the manufacture of packing boxes, contrary to the pre-war practice. The case was eventually disposed of in February 1921 in favour of the employer... See also LAB 2/676/36, op.cit.; Labour Gazette, January 1921, p.42; Glasgow Herald, December 7, 1920.

<sup>59</sup> Italics in original. The background to the 1922 national engineering lockout can of course be traced to these events.

<sup>60</sup> The solicitor's advice on the period of validity of the Act was,



and general machine work, in spite of the fact that prior to the war, such work had been performed in the establishment by skilled workmen or apprentices.<sup>62</sup> With the exception of one other firm in the trade, all the employers had agreed in February 1919 to dispense with female labour. The claim put forward by the Halifax firm, however, was that the pre-war practices covered by the Act did not refer to those peculiar to any particular establishment, but referred more generally to those in "any industry or branch of an industry". That being so, it was contended, and given that women had been employed in many branches of engineering prior to the war, the continued employment of female labour in that particular establishment did not, it was claimed, constitute a departure from the custom of the trade. The tribunal, as one might expect, was scarcely impressed by such a frontal assault on the rationale of the Act. Thus,<sup>63</sup>

"It was common knowledge", the tribunal chairman remarked, "that in nearly every trade, women were employed before the war to some extent in some establishments. If this consideration were to have the effect of rendering the employment of women lawful in an establishment in which they had not been employed prior to the war, the Act would be absolutely ineffective and the undertakings given both by agreements and by statute would be unfulfilled."

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60(cont'd) incidentally, that the munitions tribunals continued so long as necessary for the purposes of the Restoration Act and that "Strictly speaking, this may be for ever." Thus in the case of a custom not restored "until, say, 1960, the owner would be liable under the Act, unless before then it was repealed, to be prosecuted during the year 1960-61 before a Munitions Tribunal if he does not permit the continuance of the custom [i.e. for the statutory minimum period of 12 months] during that year." Unfortunately the cessation of the Ministry of Munitions in April 1921 and the repeal of the Restoration Act destroyed this romantic prospect. See LAB 2/676/34, op.cit., L. Granville Ram to J.A. Dale, September 8, 1920.

61 LAB 2/676/35, "Working of the Restoration of Pre-War Practices Act 1919; also Summary of Cases, September 8, 1920" According to Scott and Gunnison, op.cit., p. 155, there were 25 complaints.

62 Taylor v Smith, Barker & Willson (1920) 4 MAR. 35-50, February 20, 27, 1920.

63 Ibid., p.38.



Moreover, the chairman invoked the authority of Sheriff Fyfe who, in a Glasgow decision involving the employment of women on core-making, Prentice v McPhail & Sons (infra), had unequivocally held that a trade practice under the Act referred to the practice of a particular establishment, and not to the practice prevailing generally in the trade. But the Halifax employer's defence went further. Even if he were to admit that the custom of a particular establishment, rather than that of industry generally, was what the statute required to be restored, he argued that the trade practice in question was not departed from in consequence of the war. Rather, it was abandoned as a result of the reorganisation of his business, entailing the simplification of processes and the introduction of women on repetition work. It was, of course, an attractive argument containing no little merit (as well as being of fascination to the philosopher of causation), given the widely acknowledged view that dilution had pre-dated the war. But as the company had in fact notified the Ministry of Munitions during the war that the employment of women was a departure from trade practices, that could only be taken, declared the tribunal chairman, as evidence that the firm attributed the employment of women to the war.

When the employer appealed, however, the uncompromising repudiation by Mr. Justice Roche of the tribunal's decision in favour of the ASE, and his vindication of the interpretation of the statute by a maverick employer, was nothing less than a bombshell exploding under the Act. After all the careful investigations by trade unions into the shortcomings of the Munitions Act guarantees;<sup>64</sup> after the

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<sup>64</sup> See the following pamphlets published by the Joint Committee on Labour Problems after the War: Memorandum on the Records of Departures from Trade Union Rules (September 1916); The Munitions Acts and the Restoration of Trade Union Customs (November 1916); The Restoration of Trade Union Conditions in Cases not Covered by the Munitions Acts (1917); and The Restoration of Trade Union Customs after the War (1917).

rejection by the unions of an inadequate bill drafted by the Ministry of Labour,<sup>65</sup> an apparently satisfactory measure was now shown to be substantively useless.

Indeed, not only did the judge's ruling cut out the heart of the statute. He also successfully contrived to chop away its supporting limbs. For he treated the provision in Schedule II to the Munitions Act, requiring that a record of departures from pre-war practices be maintained, as virtually a "scrap of paper".

"Such notices [of departures]", he announced,<sup>66</sup> "appear to be regarded as almost, if not quite, conclusive evidence of departures from trade practices. I cannot agree. The Government for various reasons required notice of changes of conditions in particular establishments when under control. In these circumstances, the giving of such notices is of little import and the notices themselves, unless by virtue of the particular contents of particular notices, are not entitled to be regarded as of any real evidential weight."

Thus the thrust of the judge's ruling was that trade unionists during the war need not have worried unduly that the collection of records of departure was an erratic and imprecise exercise. On Clydeside, for example, the Ministry of Munitions had sent out letters, originating from London, in September 1916, to controlled establishments in the district, pointing out that the records already received had not covered the changes in all establishments. Nor were they necessarily complete in respect to particular establishments.<sup>67</sup> Therefore, a local

<sup>65</sup> See Labour Research Department [LRD], Monthly Circular, Vol. 3, December 1, 1918, pp 44-5; ibid., Vol. 4, May 1, 1919, p.37; LRD, Annual Report 1918-1919, report of Legal Committee (chairman, H.H. Slessor; secretary, G.D.H. Cole); ASE, Monthly Journal and Report, January 1919, p. 13; New Statesman, May 31, 1919, p. 206.

<sup>66</sup> Taylor v Smith, Barker & Willson, op.cit., p.48.

<sup>67</sup> For the original Ministry of Munitions instructions to employers to report records of departures, see CSA, Minute Book No. 9, October 25, 1915.



system of recording changes was introduced, with the records received by the local ministry official being forwarded to the secretary of the local labour advisory board, a committee representative of all the important engineering trade unions in the district.<sup>68</sup> But, clearly, neither the Ministry of Munitions nor employers, nor concerned trade unionists (nor indeed the Clyde Dilution Commission) need have bothered assiduously recording the 6,000 changes which officially occurred on Clydeside.<sup>69</sup> For the judge's ruling simply treated their efforts with contempt.

Certainly, the local engineering employers' association took the matter seriously, and agreed that the question was "now assuming great importance and receiving much attention from trade unions."<sup>70</sup> As a result, the president and vice-presidents of the Clyde engineers and shipbuilders were charged with scrutinising all draft returns of changes involving member firms before sending them on to the Ministry of Munitions. More than this; the employers were also concerned to record changes which adversely affected their interests, such as irregular advances, increases on list prices, or restrictions on the employment of men on particular machines or on drilling work.

Moreover, shortly after Roche's decision, the inconsistent ruling of Sheriff Fyfe in the Prentice case was, after a protracted procedure involving three tribunal sittings and three appeal hearings,

<sup>68</sup>Joint Committee etc., Memorandum on the Records etc, op.cit. pp 1-2.

<sup>69</sup>Scott and Cunnison, op.cit., pp 154-5 for this figure.

<sup>70</sup>NWETEA, Minute Book No. 8, October 2, 1916. After the Armistice, the employers, nationally, submitted that the practices which they had given up should be restored equally with those of the trade unions. However, "The unions pertinently [though perhaps unwisely] enquired whether, and on what occasion, any pledge of restoration had been given to the employers, and stated that they had no mandate to discuss the restoration of employers' customs." See New Statesman, May 31, 1919, p. 206.

eventually overruled. Thus virtual consistency prevailed as between the Scottish and English interpretations of the Act. The Ministry of Labour, however, was clearly displeased. As T.S. Owen, the responsible Ministry of Labour official commented,<sup>71</sup> the two judgments were contrary to the intentions of all the parties, employers, unions and government, involved in the drafting of the measure. Therefore no charge of bad faith could be levelled against the government. There was, perhaps, he added, the possibility that the employers suspected the existence of ambiguity in the statute, and preferred to leave the matter to the courts to resolve. But there was no evidence that this was the case. Senior officials were, however, more concerned with the impact of the rulings on the temper of the unions (though they insisted that they could do nothing about the decisions of the judges). For as the Scottish Brassmoulders' Union general secretary, James Prentice, had told the local tribunal during the first re-hearing of the case against William McPhail & Sons, a Glasgow firm of brassfounders, an unfavourable decision "would simply deepen the very strong feeling created by the Appeal Judgment."<sup>72</sup>

Indeed, it hardly seemed to matter any longer that, in the event, the employers in question were, on the facts of these particular cases, ultimately held to have been in breach of the Act, even though its broad interpretation by the judges was clearly hostile to the

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<sup>71</sup>LAB 2/719/11, "Messrs McPhail & Sons; Messrs Dickie & Sons, Paisley: Restoration of Pre-War Practices Act 1919; CCO, Glasgow, reports prosecution made against above firm by Scottish Brassmoulders' Union under above Act, December 12, 1919; memorandum by T.S. Owen, March 19, 1920."

<sup>72</sup>Thus the senior Ministry of Labour official, Horace Wilson, noted that Lord Sands' judgment was "likely to cause some feeling on the part of the unions". The permanent secretary, Sir David Shackleton, agreed that the unions had a certain justification for their dissatisfaction as the decision "certainly is not in harmony with the promises which were made in order to secure relaxation"; LAB 2/719/11, ibid., minutes, March 16, 1920.



unions' understanding and expectations.<sup>73</sup>

Not for the first time, then, was a party to litigation left to ponder the seemingly bizarre outcome of legal proceedings where he appeared both to have lost and to have won. It is little wonder that, as James Prentice, the union official, told the tribunal, "The workmen concerned could not follow the subtle legal questions arising upon the phraseology of the [Act]".<sup>74</sup> All that he could vouchsafe was that an impression had been created that the pledge was being broken, and while Fyfe himself insisted that,<sup>75</sup>

"The Tribunal ... could not control impressions, [nonetheless] it was perhaps unfortunate that the legal view of the Appeal Judgment did not square with the popular view..."

It is clear, therefore, that as soon as the war was over, the appeal judges found no difficulty in resorting to their traditional obscurantist and mystifying modes of forensic deliberation. They had assuredly learned nothing and forgotten nothing.

Indeed, lest there were any dubiety that the Act was anything other than a broken reed, a further important ruling established that a "transformation", rather than a mere "improvement", in the process of manufacture, could not be unscrambled in order to permit the restoration of the customary method of production. Thus a Leicester engineering firm during the war had changed the process of manufacturing and inspecting screw gauges to enable the replacement of skilled workmen who had traditionally worked with a centre lathe, a single point tool and a micrometer. Now girls performed the tasks automatically and the firm obtained a ruling that they were not required under

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<sup>73</sup> Thus Messrs Smith, Barker & Willson were fined £50 once Roche had remitted the case to the local tribunal. See LAB 2/719/11, op.cit. In respect to McPhail's, no fine is indicated in any of the sources consulted. See LAB 2/676/35, op.cit.; also, for the three Appeal Tribunal hearings, Glasgow Herald, March 3, June 22, December 1, 1920.

<sup>74</sup> LAB 2/719/11, op.cit.

<sup>75</sup> Ibid.

the statute to restore the custom of employing only skilled workmen.<sup>76</sup>

By February 1920, the date of the judgment, the urgency of the matter had long since passed, so far as all but isolated pockets of employment were concerned. One important lesson concerning the efficacy of labour legislation might therefore be drawn from the episode of the 1919 Act. Thus where organised labour possessed sufficient market strength, then the benefits conferred by statute were likely to be surplus to requirement. Where labour was, however, in a weak and disorganised bargaining position, then no amount of providential legislation could adequately compensate for market infirmity.

### Conclusion

In the present chapter, we sought to explain the inapplicability of the Munitions Act to the dilution campaign, as narrowly conceived, by pointing, in the context of Glasgow, to the limited penetration of the existing skilled workforce achieved by dilutees. Indeed, wherever, outside of Glasgow, dilution proposals enjoyed a smoother passage, the necessity for legal proceedings scarcely existed. For as long as wage guarantees, complying with the distinctive and covetous interpretation of L.2 and L.3 promulgated by the ASE were honoured by most employers, there was little scope for skilled trade union obstructiveness and therefore less room for tribunal proceedings -

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<sup>76</sup> Bates v Bentley Engineering Co. Ltd (1920) 4 MAR 58-67, July 23, 1920; LAB 2/676/33, "Restoration of Pre-War Practices Act 1919: ASE v Bentley Engineering Company; Leicester Munitions Tribunal, May 14, 1920." Bates was the ASE Midlands district delegate. Lynden Macassey and Henry Slessor represented the employer and complainant respectively. Issues comparable to the above case occupied the attention of the ASE and the Clyde engineering employers in mid-1919. For the details, see NWETE, Minute Book No. 10, April 23, May 26, June 12, July 15, 1919.



even supposing that employers were litigiously inclined, which was also unlikely. Indeed, as we have seen, the double-edged quality of much of the Munitions Act, manifested itself once more by enabling trade unionists to embark on a minor legal offensive under those obscure provisions which nominally governed the dilution question. Of course, Schedule II to the 1915 Act, establishing the guarantees of restoration in respect to changes in workshop practices, was . . . scarcely a "Labour Magna Charta" as some journalists had asserted.<sup>77</sup> Neither, on the other hand, was it a cudgel with the capacity to beat into submission those skilled craftsmen seeking vainly to protect their privileges. In this respect, it parallels closely the shadowy quality possessed by the 1919 Restoration Act. Also a statute with no substantive bite, the latter's symbolic importance to labour was comparable to the symbolic importance of section 4(3) to the government. Indeed, it is even questionable whether the Restoration Act was, in the event, of advantage to trade unions as a bargaining weapon, to which conception of the measure, its advocates, in a desperate effort to rationalize their demands, had ultimately been driven. In this respect, also, it appeared to mirror the Munitions Act's "provisions" for dilution. For despite the brave words of government spokesmen, including the lawyer, Macassey, they were not even wielded in terrorem over the heads of trade union leaders, officials and workshop representatives during the delicate negotiations to instal dilution agreements in the Clyde and Tyne yards and factories in 1916. Pace DORA, it was surely appreciated that the slightest whisper of Munitions Act proceedings to unjam any dilution blockages would be to court further deadlock.

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<sup>77</sup> Glasgow Herald, April 10, 1917. John Hill of the Boilermakers' Society, had, as we saw in chapter one, described Schedule II as a "trade union charter".

It is tempting, also (though perhaps reckless), to draw a further analogy; in this instance, in respect to the autonomy of law from the state. Thus on the one hand, both section 4(3) and the 1919 Act manifestly failed to do the bidding of the state. For whereas government policy was not in dispute (even if members of the Cabinet failed to accept the statutory restoration proposals with good grace),<sup>78</sup> nonetheless, section 4(3) was incapable of compelling dilution, while the Restoration Act was both too little and too late. On the other hand, it cannot be said that the tribunal judiciary, in the midst of the war, set out to thwart government wishes on dilution. For their case load was such that they were scarcely ever given a clear-cut choice as to which way to jump in the event that trade union hostility to the very essence of dilution loomed menacingly over the tribunal. It is true that the few relevant tribunal proceedings which did take place, skirted around the question of trade union restrictive practices as widely conceived, such as refusal to work with non-unionists, and tended to uphold their removal; though it should be acknowledged that procedural failures on the part of employers, as well as the latter's own "restrictive practices", were similarly enjoined by fines.

But there the parallel ends. For whereas, during the war itself, the tribunal personnel did little or nothing to compromise declared government policy on the lifting of pre-war practices, the post-war rulings of Mr. Justice Roche, by contrast, went straight to the jugular of the 1919 Act to thwart the policy-makers' intentions. In short, the belief in judicial autonomy from the state, whether relative or absolute (even if there remains a lurking suspicion that the government - albeit not the Ministry of Labour - might secretly have welcomed Roche's

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<sup>78</sup> Drislane, "Trade Union Leaders and Politics, 1910-1922", op.cit. p.200.



rulings) was reaffirmed after the war, following a wartime interlude when the executive and judicial branches of the constitution merged closer together in pursuit of corporatist aims. Thus the bizarre judicial interpretation of the 1919 Act merely served to point up the distinctive and subservient contribution which tribunal judges had made in the immediate past to advancing the interests of wartime governments.

CHAPTER TWELVEConclusions

## I

Introduction

In August 1916, W. Rowan Thomson, the Glasgow engineering employer, addressed an audience of fellow-industrialists.

"We were threatened", he complained,<sup>1</sup> "with a Ministry of Labour and a Ministry of Industry. Personally he viewed this with alarm and distrust, and profoundly hoped that they should take such steps as would prevent these threats being fulfilled (Applause). What they wanted to do was to organise themselves to assist the existing Government Departments in leaving them alone to manage their business - (applause) - which they naturally understood better than any politician and permanent official. Both these gentlemen were very good at their own business. The former dealt in votes and the latter in regulations and red tape. But neither of them produced wealth. That was the business of the manufacturer."

Clearly, the interventionist embrace necessitated by wartime held no charms for this rugged body of Scottish industrialists contemplating the post-war era. Indeed, despite the psychological lift which talk of "reconstruction" was intended to convey to a war-weary society, ministers of the Crown scarcely disabused such employers of their dreams of post-war liberty from state intrusion. Thus even before he officially became Minister of Reconstruction, Christopher Addison sought to assure representatives of the chemical industry (and no doubt the industrial world at large) that,<sup>2</sup>

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<sup>1</sup>Glasgow Herald, August 5, 1916.

<sup>2</sup>Ibid., August 3, 1917.



"The policy of the Ministry of Reconstruction when it becomes a Ministry, is not to interfere with your business (Hear, hear). Our desire is to help so far as we are able to help, and I can assure you, you need have no fear that I am at the Ministry of Reconstruction to promote nostrums of any sort or kind."

The same assurances were spelt out by Churchill, speaking to employers just four days before the Armistice. Though some transitional controls had to remain, he insisted, nonetheless,<sup>3</sup>

"... our only object is to liberate the forces of individual enterprise, to release the controls which have been found galling, to divest ourselves of responsibilities which the State has only accepted in this perilous emergency, and from which, in the overwhelming majority of cases, it had been far better to keep itself clear."

Perhaps such politicians were playing to the audience; perhaps even the audience were, in a sense, playing to the audience. For both politicians and industrialists, both before and during the immediate post-war period, did in fact toy with a number of legislative proposals on industrial relations which scarcely matched the rhetoric of laissez-faire. The militantly aggressive Employers' Parliamentary Council, for example (not to be confused with the Employers' Parliamentary Association which merged with the Federation of British Industries in the spring of 1917), demanded the legal enforceability of collective agreements and the repeal of the Trade Disputes Act 1906.<sup>4</sup> Moreover, even one of the reports of the Whitley Committee considered that, "it may be desirable at some later stage for the State to give the sanction of law "to decisions arrived at by Whitley Councils. But since the report added significantly

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<sup>3</sup>War Cabinet, Report for 1918 (London:HMSO, 1919), p.126.

<sup>4</sup>Glasgow Herald, November 13, 1917. Cf., chapter eleven, supra, note 3?; ABIS, 4th Quarterly Report, October-December 1917, p. 2525.

that "the initiative in this direction should come from the councils themselves", the climate of opinion was clearly hostile to post-war legal regimentation.<sup>5</sup> In effect, therefore, the wartime experience of compulsory arbitration and of restrictions on strikes had left trade unions with little stomach for the retention of a code of labour legislation which they found irksome and (on paper at least) severely inhibiting; and for the most part, these sentiments were shared by the most influential of the employers' lobbies. Some views were expressed within the trade union movement that compulsory unionism should be enshrined in law, and indeed a resolution to that effect was passed by the TUC in 1916, with the notable dissents of, inter alia, two unions whose representatives were both to become future Ministers of Labour; that is, George Isaacs of the Operative Printers' and Assistants' Society and G.H. Roberts of the Typographical Association.<sup>6</sup> But the most realistic proposals for post-war "progressive" legal intervention in industrial relations were in fact limited to those spheres of activity which had always been ideologically acceptable to trade unions, that is, the realm of minimum wages in poorly organised trades and the statutory regulation of maximum working hours. But as is well known, the National Industrial Conference and the government, for a couple of years, hovered over, but failed to snatch, proposals on what were in many respects no more than statutory measures of workplace paternalist welfarism.<sup>7</sup>

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<sup>5</sup> Fourth Report of Committee on Relations between Employers and Employed: Conciliation and Arbitration, P.P. 1918 VII, Cd. 9099. Cf., New Statesman, July 7, 1917, p. 317; Rodger Charles, The Development of Industrial Relations in Britain 1911-1939 (London: Hutchinson, 1973), p.106.

<sup>6</sup> TUC, Annual Report 1916, pp 255-9.

<sup>7</sup> Rodney Lowe, "The Failure of Consensus in Britain: The National Industrial Conference, 1919-1921", Historical Journal, Vol. 21, 1978, pp. 649-75; Charles, op.cit., chapters 15-17.



The failures to fulfil the pre-Armistice promises of wholesale reconstruction (a wartime commitment firmly embedded in sentiments expressing the consensus and industrial partnership necessary to engage in the post-war economic struggle with overseas competitors) have been attributed by historians to factors as diverse as the inhospitable economic climate;<sup>8</sup> the administrative inadequacy of the relevant ministries, especially the Ministry of Labour;<sup>9</sup> the domination of "Treasury" thinking;<sup>10</sup> and the failure of "imagination" on the part of those unwilling to "go the extra mile".<sup>11</sup> But perhaps we ought not to be surprised, given the wartime signals transmitted by Addison and Churchill (as well as by countless employers) implying that retrenchment was a more likely prospect than reconstruction. Thus the Ministry of Labour had, for example, already noted the "revulsion of feeling"<sup>12</sup> generated by the extension of wartime controls over industry, and had resolved, in their place, to enable the individual to pursue his own economic salvation in an atmosphere of "freedom". A policy of decentralization, "home rule" for industry and Whitley Councils was therefore promulgated. As a senior civil servant, cited by Lowe, observed,<sup>13</sup>

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<sup>8</sup>Peter K. Cline, "Reopening the Case of the Lloyd George Coalition and the Postwar Economic Transition, 1918-1919", Journal of British Studies, Vol. 10, 1970-71, pp 162-75; cf., ibid., "Winding Down the War Economy: British Plans for Peacetime Recovery, 1916-1919", in Kathleen Burk (ed.) War and the State, op.cit., chapter 7, re the change in British assumptions regarding the threat posed by Germany to British national security.

<sup>9</sup>Rodney Lowe, "The Ministry of Labour 1916-24: A Graveyard of Social Reform?", Public Administration, Vol. 52, 1973, pp 415-38; ibid., "The Erosion of State Intervention in Britain, 1917-1924", Economic History Review, Vol. 31, 1978, pp 270-86.

<sup>10</sup>Ibid.

<sup>11</sup>P.B. Johnston, Land Fit for Heroes (1968), cited in Lowe, "The Failure of Consensus, etc." op.cit., p.671.

<sup>12</sup>Lowe, "The Erosion of State Intervention etc.", op.cit., p. 284.

<sup>13</sup>Ibid., "The Ministry of Labour 1916-19: A Still, Small Voice?" in Burk (ed.) op.cit., chapter 5, at pp 124-5.

"It is clear that no system of bureaucratic control of industry is ever likely to succeed in this country. There are two reasons for this: (a) that State interference is foreign to the whole temper and outlook of the English people, who have always been bred in the belief that they are competent to manage their own affairs and (b) that no system of centralized administration is likely to produce such good results as a system by which the people concerned are themselves interested in the working out of their problems and the success of the scheme adopted to solve them."

Of course, this sounded uncannily like a return to laissez-faire (or perhaps collective laissez-faire in Kahn-Freund's phraseology) and to the "normalcy of 1914", though James Cronin has recently suggested<sup>14</sup> that social change in the post-war era resulted in a regime of "bastardised liberalism or corporatism without Keynes, State and cash." Our own view, for what it is worth, is that inasmuch as a more clearly defined government policy on industrial relations led to the "proto-indicative planning" of Whitley Councils, national bargaining and the limited extension of trade boards, despite the "erosion" of more gradiose schemes,<sup>15</sup> and also perhaps to a peacetime articulation of the national interest, then the terminology may be apposite.<sup>16</sup> But the change in relation to 1914 is, surely, one of degree than of kind.

#### The Dismantling of the Munitions Acts

Yet whatever be the appropriate nomenclature, or indeed character of the regime which followed the Armistice into the inter-war years, the influence of a restrictive wartime conception of corporatist cooperation was by popular (and, significantly, by bureaucratic) consent, virtually at an end. The nostalgic regrets at the too-rapid demise

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<sup>14</sup> James E. Cronin, "Coping with Labour, 1918-1926", in James E. Cronin and Jonathan Schneer (eds.) Social Conflict and the Political Order in Modern Britain (London: Croom Helm, 1982), pp 113-145, at p.126.

<sup>15</sup> Cf., Lowe, "The Erosion of State Intervention etc", op.cit.

<sup>16</sup> Cf., Middlemas, Politics in Industrial Society, op.cit.; Leslie Hannah, The Rise of the Corporate Economy (London: Methuen, 1977).



of wartime collectivism, as expressed by Tawney in 1943,<sup>17</sup> indeed represented the voice of distant hindsight.

Thus the arrival of the Armistice was accompanied a mere ten days later by the lifting of the prohibition on strikes and lockouts contained in Part I of the Munitions Act 1915. And, indeed, despite the fulminations of bodies such as the Employers' Parliamentary Council, there was not much doubt that this restriction on industrial action could not survive the cessation of hostilities in Europe, especially since, as Wolfe pointed out, there was a "binding obligation" under the Treasury Agreement to remove the prohibition after the war.<sup>18</sup> In late 1917, for example, the legal adviser to the Ministry of Munitions, J.C. Miles, had floated the proposal, possibly without genuine conviction, of obtaining statutory powers to order men on strike back to work. The Ministry of Labour, however, were decidedly unenthusiastic.

"I am not convinced", remarked one official,<sup>19</sup>  
 "that it would be really effective. When a large  
 body of men are on strike, they frequently  
 do not care very much about laws or threats  
 of prosecution."

Askwith similarly doubted the efficacy of the proposal and took the view that such a power would "lead to considerable objection when restrictions are being relaxed."<sup>20</sup>

The Ministry of Munitions itself, in a memorandum of July 1918 to the Ministry of Reconstruction,<sup>21</sup> had concluded that the prohibition on strikes and lockouts was no longer justified on the cessation of

<sup>17</sup>R.H. Tawney, "The Abolition of Economic Controls etc.", op.cit.

<sup>18</sup>Wolfe, Labour Supply and Regulation, op.cit., p. 302.

<sup>19</sup>LAB 2/213/IC 205, "Munitions of War Acts (1915-1917) etc... November 5, 1917", op.cit.

<sup>20</sup>Ibid.

<sup>21</sup>MUN 5/19/221/21, "Continuation of Emergency Legislation After the War; H.H. Piggott to Ministry of Reconstruction, July 19, 1918". Piggott was Assistant Secretary, Demobilisation and Reconstruction, at the Ministry of Munitions.

hostilities. It considered that lockouts had, during the war, been prevented by the threat of strikes and that probably the same "rule" would apply in peacetime. On the other hand, it reminded the Reconstruction ministry, the Munitions Act had failed to prevent strikes of any magnitude, though "small and petty" strikes had, to some extent, been deterred (a proposition which obviously presents difficulties of verification). Yet even in those cases, it continued, employers themselves had been most reluctant to prosecute, preferring to call upon the ministry to take proceedings (which, needless to say, in the case of the Ministry of Munitions, it would be in no position to do in the future). Moreover, while in theory Part I of the Munitions Act was designed to prohibit strikes, in practice, its main achievement was to settle increases in wages, and by that means, to avoid apprehended strikes. Additionally, where strikes had taken place, the function of Part I was to enable a public enquiry to be conducted into the merits of the strike, and thereby to rely on the "pressure of public opinion" to bring the stoppage to an end. Thus the possibility of retaining compulsory arbitration as a public relations exercise, but without the accompaniment of a ban on strikes, was mooted as a possible peacetime development. Clearly, however, the proposal had no long-term future especially since the Fourth Report of the Whitley Committee had insisted that,<sup>22</sup>

"The experience of compulsory arbitration during the war has shown that it is not a successful method of avoiding strikes, and in normal times it would undoubtedly prove even less successful."

Humbert Wolfe, enthusing after the event, differed in his analysis of the wartime experiment, but reluctantly conceded its inapplicability for the future. Thus he commented that,<sup>23</sup>

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<sup>22</sup>P.P. 1918 VII, Cd 9099, op.cit.; Labour Gazette, July 1918, p.262.  
<sup>23</sup>Wolfe, op.cit. p. 303.



"The value of such arbitration had been proved up to the hilt during the War, and to lose so considerable an instrument might well be a retrograde step. On the other hand, Labour opinion, at any rate among the great Unions, was solidly arrayed against it..." <sup>24</sup>

The revocation of the Ordering of Work regulations, albeit in September 1919, likewise passed unnoticed and unlamented, <sup>25</sup> even by employers whose concern was, in fact, confined to the continued existence of section 3 of the 1917 Act which required a week's notice to be granted before termination of employment. Thus as late as November 1920, the EEF were impressing on the Ministry of Labour that, <sup>26</sup>

"Employers have the greatest difficulty knowing their obligations, and the possible necessity of a week's notice when there is a great shortage of work or materials through a large strike tends to prevent men who might be employed from day to day from being so employed, and this tends to aggravate distress."

Of course, the urgency of the question from the employers' perspective was reinforced by the prevalence of unemployment and short time which accompanied the onset of the recession in the second half of 1920.

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<sup>24</sup> Compulsory arbitration was, of course, formally retained after the Second World War until 1959, while the ban on strikes was lifted only in 1951. The efficacy of laws designed to prohibit strikes was, indeed, a controversial question during the Second World War, especially following the mass prosecution of the Betteshanger miners in 1942, and the imprisonment of three of their officials by the Canterbury magistrates. That veteran of legal proceedings in the First World War, Lynden Macassey, wrote to The Times, January 27, 1945, that "Imprisonment for nonpayment of fines for illegal wartime striking, however juridically logical and theoretically justifiable, was under modern conditions (i.e. those of 1916) industrially ineffective and nationally undesirable - that in practice it operated to impair respect for the rule of law." Cited in Alan Bullock, The Life and Times of Ernest Bevin, Volume Two: Minister of Labour, 1940-1945, (London: Heinemann, 1967) p. 268.

<sup>25</sup> See notice in London Gazette, September 5, 1919.

<sup>26</sup> LAB 2/435/25 "EEF Correspondence Suggesting that Section 3 of the Munitions of War Act 1917 Should be Repealed, August 14, 1919; letter from Allan Smith to H.J. Wilson, November 3, 1920". Concern was also expressed over the retention of section 9 of the 1916 Act which defined "munitions work", on the ground that employees formerly on munitions work might expect to be treated differently (presumably more favourably) than those on "ordinary" work.

But the Ministry of Labour itself accepted the theoretical premise that,<sup>27</sup>

"... the restrictive effect of the section concerned, providing as it does in general for a minimum period of notice of a week by means of "wartime" legislation, is now considered to be an unnecessary interference with the freedom of contract between employer and employed."

No doubt the spectacle of some of the proceedings under section 3 was repellant to many of those hard-faced businessmen who thought they had seen the back of wartime "conformativism". There was, for instance, the prosecution by the Amalgamated Society of Woodcutting Machinists of John Woyka & Co., a Glasgow firm of sawmillers which, having locked out its men, found itself obliged under section 3, to pay a workman a week's wages.<sup>28</sup> In another Glasgow hearing, Beardmore's found that they were required to give a week's wages in lieu of notice, to a group of men hired for a specific task, which they had been told would take no more than a fortnight to complete.<sup>29</sup> A final example concerned a Lanarkshire foundry, the Acme Steel & Foundry Co. Ltd., which opted to close down during the railway strike of September 1919, and was required by the tribunal to pay a week's wages to those employees laid off, rather than be permitted to shelter behind the partial dislocation to their operations occasioned by the strike. The case is, however, noteworthy for the vehemence with which Sheriff Fyfe in the local tribunal reiterated the statutory duties of those employers labouring under a "mistaken view of the present-day relationship of workman and employer".<sup>30</sup> For, he continued,<sup>31</sup>

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<sup>27</sup>Ibid., ministry memorandum, undated; authorship unknown.

<sup>28</sup>Ibid., minute by T.S. Owen, September 4, 1920. The tribunal hearing was on August 13, 1920.

<sup>29</sup>William Beardmore & Co. Ltd. v. Humphrey Richards 1919 SMAR 175-7, November 4, 1919. Cf., Beardmore v R. Hamilton et al., ibid., 158-62, March 19, 1919. In this case, tank construction contracts terminated on December 30, 1918. The firm gave notice on December 20 that the works would close for a week's holiday on December 27, and on Christmas Day (which was not a holiday in Scotland), it gave a week's notice to terminate the contracts of employment.

<sup>30</sup>Acme Steel & Foundry Co. Ltd. v James Fulton 1919 SMAR 186-194, at p. 187, December 26, 1919; January 22, 1920. Fulton was, of course, president of AIMS.

<sup>31</sup>Ibid., p. 186. Italics in original.



"... some employers in this district, unfortunately will not realize that the cardinal principle of the existing labour code, under which industry is carried on, is that no workman is to be suddenly deprived of work."

As we can see, therefore, that self same spirit which had animated Fyfe as chairman of the Scottish Commission on Industrial Unrest to advocate that,<sup>32</sup>

"... the main direction in which relief from industrial unrest can be looked for in the future is a better system of education, with a greater insistence on the corporate spirit and recognition of the principle that there is a national as well as a personal element in all industry."

continued to pervade his judicial pronouncements right up to the very last days of his tribunal, no doubt prompting the Scottish Ironmasters' Association to add its name to the list of those employers' bodies pressing for immediate repeal of section 3.<sup>33</sup>

For despite the flirtation of the National Industrial Conference with such matters as wages and hours bills, the residual conformativist provisions of the Munitions Act still conjured up the image of intolerable bureaucratic imposition. Indeed, whereas the NIC proposals amounted to the attempt by large firms to seek the extension of already recognized terms to those smaller firms in the trade which threatened to undercut through lower costs, the Munitions Act laid down requirements which not even the larger firms had chosen to concede voluntarily.<sup>34</sup>

Thus section 3 was repealed on April 1, 1921,<sup>35</sup> six months after

<sup>32</sup>P.P. 1917-18, XV, 133, para 6.

<sup>33</sup>LAB 2/435/25, op.cit.

<sup>34</sup>Universal minimum wages and hours regulation raised matters conceptually distinct from those underpinning such institutions as Whitley councils and trade boards. For these latter could be rationalised as steps aimed at furthering home rule for branches of industry where bargaining structures, especially at national level, were inadequate or non-existent.

<sup>35</sup>By Order in Council of March 24, 1921, issued under the Ministry of Munitions Act and the Ministries of Munitions and Shipping (Cessation) Act 1921.

the final lifting of statutory wage regulation under the Wages (Temporary Regulation) Act 1918. The 1918 Act, as we have seen, had removed the prohibition on strikes just ten days after the Armistice. It also abolished compulsory arbitration, except in respect to the question of what was the "prescribed" rate under the Act, and to whether the rate could be altered.<sup>36</sup> The intention was to maintain by law for six months in the first instance (but extended till September 30, 1920 by the Industrial Courts Act 1919), the prevailing minimum rates of wages. The purpose, of course, was to prevent dislocation of the labour market and possible reductions of wages by over-enthusiastic employers religiously applying supply and demand theory, following the demobilization of millions of soldiers, their re-absorption into the labour force and the eviction of the dilutees.<sup>37</sup>

Thus proceedings before the Glasgow tribunal were instituted by such diverse groups as conductresses and cleaners employed by Glasgow Corporation Tramways Department,<sup>38</sup> and who claimed they had been underpaid; by boatbuilders claiming their employer had refused to implement an award in retaliation for a strike;<sup>39</sup> by trade union officials exploring whether specific classes of "general labourers"

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<sup>36</sup>Glasgow Herald, November 27, 1918; OHMM, Vol. VI, Part II, p. 92.

<sup>37</sup>Wolfe, op.cit., p. 306; W.A. Orton, Labour in Transition (London: Philip Allan, 1921), pp 178-9.

<sup>38</sup>Glasgow Herald, November 4, 1920.

<sup>39</sup>Ibid., December 21, 1920; Labour Gazette, January 1921, p. 43; LAB 2/719/12; "Messrs Hugh McLean & Son, Govan, per CCO [Chief Conciliation Officer], Glasgow; re Boatbuilders, October 2, 1920".



were covered by the Wages Act;<sup>40</sup> and finally by those insisting that general labourers transferred to assist bricklayers at Stewart & Lloyds Tube Works were entitled to bricklayers' labourers rates.<sup>41</sup>

But all parties were very much aware of the exceptional and highly artificial character of the Wages Act, and little complaint was voiced from any quarter when it was permitted to expire gently on September 30, 1920, "by which time", remarks Lowe,<sup>42</sup> "even the trade unions had little interest in its continuation". The Ministry of Reconstruction was thus certainly in no danger of excessive distortion when it commented in March 1919 that,<sup>43</sup>

"Whilst it is yet too early to glean the experience of State intervention in wages questions during the War, it is probable that war-time expedients will provide little in the way of new developments of State policy."

Indeed by 1926, when Henry Clay, a wartime recruit to the Ministry of Labour, cast his critical, academic eye over the wartime wages experiment,<sup>44</sup> he found much to criticise, as well as room for praise. But, essentially, wartime structures of wage control pointed up lessons for the future as to the paths which it was imperative to follow. Wartime controls, themselves, had been justifiably jettisoned.

<sup>40</sup> Robert McLaren & Co. Ltd. v J. Addison and William Shanks & Co. Ltd. Robert Climie 1919 SMAR 167-70, May 16, 1919; Glasgow Herald, March 23, 1920.

<sup>41</sup> Stewart & Lloyds Ltd. v Robert Climie 1919 SMAR 182-5, November 5, 1919. Cf., Campbell, Achnach & Co. v Gould 1919 SMAR 178-81, November 28, 1919, concerning the applicability of an award to women and girls in the india-rubber trade. The employer was, of course, the firm involved in the abortive lockout prosecution in 1915.

<sup>42</sup> Lowe, "The Failure of Consensus etc." op.cit., p. 653.

<sup>43</sup> Ministry of Reconstruction, The State Regulation of Wages, Reconstruction Problems 19 (HMSO, March 1919) p.2.

<sup>44</sup> Clay, "Government Control of Wages in Wartime", op.cit.

### Munitions Tribunals

"Is anything being done", asked a member of the Ministry of Labour's legal department, in August 1920, "to place on record the Department's appreciation of the services rendered by these Tribunals?"<sup>45</sup> Though the somewhat embarrassed tone of the question may have been prompted simply by a failure at an earlier stage to extend the normal courtesies to local worthies on the completion of their noble, voluntary efforts, it probably does, rather, betoken a deeper gratitude for the tribunal's achievements. The fact is that, apart from the munitions tribunals, no other features of the Munitions Act, among its varied provisions dealing with strikes and lockouts; compulsory arbitration; factory discipline; labour mobility; guaranteed minimum wages; constructive dismissal; compensation awards; minimum periods of notice or wages in lieu; and rights to membership of trade unions and freedom from victimisation, were considered worthy of even the most cursory examination with a view to their permanent incorporation within the body of peacetime labour law.

Indeed, as early as February 1917, J.C. Miles was broaching the possibility of retaining the tribunals on a peacetime basis,<sup>46</sup> a suggestion also made to (and apparently approved by) the Ministry of Reconstruction in July 1918.<sup>47</sup> However, it was only after the Armistice that fuller consideration was given to their potential adaptation to peacetime purposes.<sup>48</sup> There were two strands of thought. The first derived from Miles' proposal that tribunals be

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<sup>45</sup> LAB 2/676/34, "Restoration of Pre-War Practices Act 1919; Period of Validity of Act, Solicitor's Opinion, J.A. Dale to Solicitor, August 31, 1920".

<sup>46</sup> MUN 5/353/348/1, "Legal Questions: History of Legal Department, by J.C. Miles, February 6, 1917."

<sup>47</sup> MUN 5/19/221/21, op.cit.

<sup>48</sup> For a brief account, see Wigham, Strikes and the Government 1893-1974, op.cit., pp 45-6.



retained to adjudicate upon all questions arising under the individual worker's contract of employment, especially those concerning wages and damages for breach of contract. The second approach envisaged the deployment of the tribunals as local courts of arbitration along the lines of Fyfe's proposal which we noted in chapter seven.

Miles' argument<sup>49</sup> was that the tribunals had proved themselves far more suited to handle the ordinary common law claims of workers arising out of the contract of employment than the existing police courts and county courts. Thus they possessed unrivalled experience of the subject matter, were speedy and extremely cheap, informal and flexible. They had no need of solicitors and currently were deciding wages questions under the 1918 Wages Act. Perhaps most importantly, they had secured, through the presence of assessors, the confidence of both workmen and employers. Support for the idea came from the Labour Research Department,<sup>50</sup> from a number of trade union officials<sup>51</sup> and from senior departmental colleagues. Even the Home Office was sympathetic.<sup>52</sup> The problem was the entrenched opposition of the Lord Chancellor's Office, or, more particularly, of the permanent secretary, Sir Claud Schuster.<sup>53</sup> For by marshalling a string of what were, in effect, spurious objections, principally of the "floodgates" variety, Schuster cleverly succeeded in killing

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<sup>49</sup>LAB2/805/SD398/2 "Transfer of Munitions Tribunals to the Ministry of Labour", November 12, 1918". The relevant memorandum was actually drafted by M. Baird, assistant solicitor at the Ministry of Labour.

<sup>50</sup>LRD, Monthly Circular, Vol. 5, November 1, 1919, p. 47.

<sup>51</sup>Wigham, op.cit., p. 46.

<sup>52</sup>Ibid.

<sup>53</sup>LAB 2/805/SD398/2, J.C. Miles to Horace Wilson, June 13, 1919: "I do not think really that the Lord Chancellor is personally so interested in this question".

the idea as an exercise in judicial reorganisation.<sup>54</sup> Miles prepared a draft reply<sup>55</sup> which acknowledged the validity of just one of Schuster's points, that the munitions tribunals were not self-supporting, as they charged no fees. This could, of course, easily be remedied, he pointed out. But in view of Schuster's strong rebuff, it was thought necessary to drum up "much more outside pressure".<sup>56</sup> Thus a last-ditch proposal was put forward to canvass the National Industrial Conference on the question of "Industrial Courts, whether generally or for purposes of the Hours and Wages Bills",<sup>57</sup> the measures which the Provisional Joint Committee were then examining.<sup>58</sup> But as Horace Wilson, doubting the advisability of the proposed reference, observed, "... this will raise in an acute form, the question of inspection and enforcement by the State".<sup>59</sup> Such criticism was, of course, unfair,

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<sup>54</sup>The Lord Chancellor's Office arguments, ibid., included, inter alia, (1) that the establishment of new courts would lead to the duplication of Courts dealing with the same subject matter; (2) that patronage vested with the Minister of Labour who could dismiss without cause at any time. Moreover, "It cannot be anticipated that these men who are paid on average two guineas a day can be of the same standing and calibre as the County Court judge or the Stipendiary-Magistrate"; (3) that the Workmen's Compensation Act would be next in line for a take-over bid (this was possibly Schuster's greatest fear); (4) that the county court judges' experience with small debt collection "mainly from the working-classes", and their experience as arbitrators under the Workmen's Compensation Acts ensured their "far greater and more varied experience". It would be detrimental to the administration of local justice if the County Court were to be deprived of this experience and become a mere debt-collecting organisation". (But this was the greatest irony of all. The county court was a "mere debt-collecting organisation", and since few county court judges displayed sensitivity and sympathy to working class debtors, they were hardly likely to inspire confidence in adjudicating on wage claims. On this question, see G.R. Rubin "Law, Poverty and Imprisonment for Debt 1869-1914", in G.R. Rubin and David Sugarman (eds.) Law, Economy and Society 1750-1914 (Abingdon: Professional Books, 1984). For worker-plaintiffs in the county courts, see, for example, P.P. 1909 (239) VII, 281, especially Q.Q. 1376 and 1575, cited in David Sugarman, J.N.J. Palmer and G.R. Rubin, "Crime, Law and Authority in Nineteenth Century Britain", op.cit., at p.113).

<sup>55</sup>LAB 2/805/SD398/2, op.cit., note by Miles, March 26, 1919.

<sup>56</sup>Ibid., Miles to Wilson, June 13, 1919.

<sup>57</sup>Ibid.; see also LRD, Monthly Circular, Vol. 5, August 1, 1919, p.16.

<sup>58</sup>Lowe, "The Failure of Consensus etc", op.cit., pp 655-7.

<sup>59</sup>LAB 2/805/SD398/2, op.cit., H.J. Wilson to H.B. Butler, June 17, 1919.



both because the question of enforcement of the Hours Bill could hardly be avoided for ever, and also since the "State" already provided facilities for enforcement of such matters through the existing (albeit unsuitable) courts of law. Nonetheless, the creation of an additional judicial, and therefore state institution, was bound to run counter to the gathering trend of departmental opinion which conceived of the role of the state, especially from late 1919, in terms of a disengagement from the regulation of industry rather than in terms of the forging of further links of a superintending nature.

Thus if Miles' proposal, which was in all conscience modest enough, was thought, however misleadingly, to contain a whiff of compromise for the department's neutrality, then the more daunting recommendation to transform the munitions tribunals into local arbitration tribunals, raised the question in a more acute form. The idea had been suggested, independently, by three different munitions tribunal chairmen, Sheriff Fyfe (supra, chapter seven), E.C. Wethered, Bristol<sup>60</sup> and T.E. Mansfield, Preston.<sup>61</sup> They had all been struck by the seemingly interminable proceedings of wartime arbitration, whereas the prompt commencement of negotiations to settle grievances ought, in their view, to have been accorded the highest priority. And since, moreover, an impressive quality of the wartime munitions tribunals had been their speedy deliberation, it seemed sensible, in order to prevent further labour unrest, that the tribunals' role should be expanded to include the drawing up and adjustment of terms and conditions of employment when disputes arose.

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<sup>60</sup>LAB 2/805/11.

<sup>61</sup>LAB 2/805/SD 398/2, Mansfield to Ministry of Labour, May 30, 1919; Wilson to Shackleton, June 4, 1919. The idea has recently been revived by the current Master of the Rolls, Sir John Donaldson. See the Guardian, November 30, 1983. For a brief critique, see G.R. Rubin, "Don't forget the lessons of labour history", Guardian, December 5, 1983.

The sticking point within the Ministry of Labour was, however, the very core of the scheme itself; that this particular "rapid deployment force" would be possessed of unacceptable legal powers to enforce awards, irrespective of whether the reference to the local arbitration tribunal was to be by consent alone, as in Wethered's suggestion, or whether reference, as in Fyfe's proposal, was to be mandatory on a difference occurring. As the author of the ministry's response, Major H. Conachar, observed,<sup>62</sup> the conferment of a legal jurisdiction would not ensure that the national interest was furthered; the local arbitration tribunals might interfere with "general issues"; and there would be no power to prevent them doing so. In other words, the same perceived theoretical difficulty which the Ministry of Labour had encountered in respect to wages and hours legislation, in attempting to reconcile regulatory and auxiliary labour laws on the one hand,<sup>63</sup> and the promotion of home rule for industry on the other,<sup>64</sup> was likely to afflict the proposal to retain the munitions tribunals in a new guise. Moreover, it was pointed out, there was "little evidence of any important demand for local arbitration tribunals to be established by the State [as the] great organised industries have very complete voluntary machinery."<sup>65</sup> Indeed, all nineteenth century experience of similar legislation, such as the "completely disregarded" Councils of Conciliation Act 1867, had demonstrated the futility of seeking statutory authority to enforce, compulsorily, such arbitration awards in peacetime.

When Sheriff Fyfe came to make his valedictory speech at the

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<sup>62</sup> LAB 2/805/SD398/2, "Memorandum on Local Industrial Tribunals, by Major H. Conachar, November 24, 1919".

<sup>63</sup> For these terms, see Otto Kahn-Freund, Labour and the Law, 3rd edn., ed. by P.L. Davies and M.R. Freedland (London: Stevens & Son, 1983).

<sup>64</sup> Lowe, "The Erosion of State Intervention etc", op.cit., at pp.274,278.

<sup>65</sup> LAB 2/805/SD398/2, op.cit. "Memorandum... by Major H. Conachar etc."



Glasgow munitions tribunal on April 11, 1921,<sup>66</sup> he found himself sucked into an orgy of mutual back-slapping and tributes on the part of the assembled audience of regular advocates and tribunal assessors. William Brodie, for example, made an impassioned speech regretting the passing of the tribunal, and called for similar machinery in the future. Similarly, one of the employers' assessors, Sam Mavor of Mavor & Coulson Ltd, together with Archibald Gilchrist of Barclay Curle shipyard, echoed the sentiments, and spoke of the "calamity" in prospect if the experience of Fyfe's tribunal were cast aside.<sup>67</sup> But it was the joint representative of the Clyde shipbuilders' and engineers' associations, David Higgins, who neatly (if perhaps unintentionally) pinpointed the fatal weakness in Brodie's and Mavor's optimistic proposals, whose adulatory prose had gracefully penetrated the clubbable atmosphere of the County Buildings. Thus, while regretting that industry would become bereft of the services of Sheriff Fyfe's tribunal in the future, nonetheless, added Higgins,<sup>68</sup>

"They were glad that the cessation of the Ministry of Munitions and the consequent termination of the Tribunals had come about, because it was the severing of the last tentacle of the octopus of Government control which gripped industry and employers and employed alike during the past six years."

In the final analysis, the struggle to be "free" was indeed a powerful urge within industry. For example, if we take the case of the Whitley proposals for joint industrial councils, it was certainly true that,<sup>69</sup>

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<sup>66</sup> Glasgow Herald, April 12, 1921.

<sup>67</sup> As James Gavin, the chief conciliation officer at the ministry in Glasgow (and a former Iron and Steel Workers' Union official) informed the ministry in London, "The speakers do not appear to have any real constructive policy to submit on this point but there was clear unanimity on the general theory." See LAB 2/676/34, op.cit.,

<sup>68</sup> Gavin to T.S. Owen, April 12, 1921.

<sup>69</sup> Glasgow Herald, April 12, 1921.

Wigham, Strikes and the Government 1893-1974, op.cit., p. 43.

"To many on both sides of industry, a major attraction of the scheme was that it involved free industrial self-government after the irksome government interference of the war years."

But the absence of support from the Clyde shipbuilding and engineering employers' associations for the retention of the munitions tribunals, perhaps signified something more than this. For as Cronin observes of the experience of war controls,<sup>70</sup>

"... intervention often meant an increase in the leverage of workers at the same time as it involved the co-option of businessmen and labour officials in the daily tasks of administration... [with employers] complaining vociferously over state intervention in general and the government's conciliatory attitude towards labour in particular."

Employers' objections to legal controls, it is suggested, were therefore not simply a ritual genuflection to a theoretical postulate. Their objections were also to the fact that, paradoxically, labour controls frequently had the nasty habit of boomeranging on employers, who might find themselves, rather than their workmen, condemned at the bar of the munitions tribunal, and compelled to mend their ways. Indeed there could not, perhaps, have been a clearer affirmation that the boot was on the other foot than the fact that the winding-up of the Glasgow tribunal left a number of workers' complaints under statute high and dry without means to pursue them.<sup>71</sup> Thus, as we turn to the broad question of the evaluation of the Munitions Acts as an exercise in wartime employment legislation, this double-edged quality of an ostensibly labour-restrictive code becomes apparent.

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<sup>70</sup>Cronin, op.cit., pp 118, 139n.

<sup>71</sup>LAB 2/435/25, op.cit., Gavin to Ministry of Labour, April 5, 1921.



## II

At a superficial level, the "success" of the Munitions Act is attested by military victory; by the achievement of the British state in driving its labour force to continue the manufacture of munitions of war in sufficient quantity that the enemy's resolve at last collapsed. Thus it seems probable, for example, that munitions workers were responsive to ministry initiatives, backed by legal sanctions, to eliminate the worst excesses of slack timekeeping; and that the nomadic propensity of skilled craftsmen to flit from factory to factory in search of higher rewards, with its consequent effects on wage drift, was significantly hindered by the introduction of the leaving certificate scheme.<sup>72</sup> But to measure the contribution of the Munitions Act to the achievement of the "great munition feat" is perhaps a quantitative impossibility,<sup>73</sup> given the variety of further factors such as manpower allocations, productivity, technological innovation, capital investment, managerial skills, and morale of the labour force, to name just some, which would require to be evaluated. For we have already had occasion (chapter two, supra) to note the sceptical

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<sup>72</sup>No turnover figures for factories in the post-July 1915 period can be located to compare with those cited by Henry Clay for three armament firms between April and May 1915. This showed that for every 100 workers employed, 50 left the establishment. See Clay, op.cit., p.61. In fact, no sudden dislocation of the labour market, through widespread shifts of employment, occurred immediately on repeal of the leaving certificate scheme. For the Clyde district, see USB, Monthly Report, November 1917, p 21. For elsewhere, see ASE, Monthly Journal and Report, November 1917, p. 39 (West of England); ibid, December 1917, p. 26 (Sheffield). Where movement did occur, it was construed by trade union officials as a protest against unsatisfactory employers. See ibid., November 1917, p. 32 (Yorkshire); ibid, December 1917, p. 29 (West of England). Abolition was claimed to have had an impact on wages in that the Ministry of Munitions thereby lost some of its power to resist wage demands as a result of which, declared Clay, an "avalanche of claims" was submitted, eventually leading to the "administrative confusion" of the 12½% award. See Clay, op.cit., p.66.

<sup>73</sup>As a team of researchers, examining the effects of the Employment Act 1980 have recently remarked, "The use and impact of law cannot be determined in a mathematical fashion." See Peggy Kahn, Norman Lewis, Rowland Livock and Paul Wiles, Picketing: Industrial Disputes, Tactics and the Law (London: Routledge and Kegan Paul, 1983) p. 194.

view of the New Statesman which had dismissed the suggestion that the Munitions Act, per se, had in fact contributed anything positive to the enhanced output of war matériel.<sup>74</sup> Indeed, the embarrassed tone of the Official History's post mortem on the Clyde troubles in 1915-16 might, justifiably lead one to infer that munitions production was increased in spite of, rather than because of, the existence of labour controls. Thus it concluded that,<sup>75</sup>

"In a chronicle of the relations between the Ministry of Munitions and Labour it is inevitable that administrative difficulties, disappointed expectations, mistakes, strikes, grievances and failings should occupy a large space and dominate the argument. The uneventful, steady work alike of the Department and of employers and workpeople afford little material for the imagination, and can only be recorded in statistical tables of output, from which individuality, human nature, and life itself have been eliminated. But a false impression of the achievement of the country can only be avoided by bearing constantly in mind the fact that the troubles and failures set forth in this narrative were only eddies in the great stream of national effort. It is the fashion in some circles to deride voluntary action and exalt coercion. But such coercive measures as the Government adopted were only rendered practicable by the free will and forbearance of the great majority of the people. The voluntary spirit was not superseded. It was at most disguised from the public view."

Indeed, it should not be forgotten that the presence of a legal code did not automatically result in the abandonment of voluntarist methods of settling disputes. In the first instance, not every prosecution was pursued to the bitter end. For many tribunal complaints were settled without a formal hearing having taken place, with the chairman exerting his influence to correct perceived failings through informal channels. Thus an anonymous tribunal chairman recorded that,<sup>76</sup>

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<sup>74</sup>Cf., New Statesman, August 19, 1916, pp 460-1 for similar views at a later date.

<sup>75</sup>OHMM, Vol. IV, Part II, p.34.

<sup>76</sup>Anon, "Munitions Tribunals", Juridical Review, Vol. 31, 1919, at p.159.



"A telephone message has remedied many a grievance and secured observance of the principles of the Act. Just as a personal note to a workman has often improved his time-keeping, so a timely hint to an employer that a foreman's methods had become too arbitrary has prevented shop friction which might well have led to serious trouble. The general policy has been the open door to all parties and the prevailing spirit conciliation."

While much of the stress in the above remarks was laid on what were evidently considered as examples of individual delinquency, conflict management (as we shall also see shortly) characterized the 'voluntarist' initiatives of the tribunal. Thus, in one case, 18 workers from a Glasgow shipyard had been prosecuted by their employer for having refused to comply with management instructions.<sup>77</sup> In retaliation, they themselves submitted leaving certificate applications. Sheriff Craigie, however, successfully arranged a settlement satisfactory to each side, thereby earning the gratitude both of William Mackie, the Boilermakers' Society official, and of A.S. Biggart, representing the employer.

Apart from this expedient, more calculated steps were taken to avoid becoming entangled in the legal reticulation. Thus the experiment at Whitehead Torpedo Works, to which reference has been made in chapter eight, is perhaps the most notable example of the deliberate refusal by a company to rely on the Munitions Act for the enforcement of factory discipline. But other instances of a less formal and institutionalized nature can be cited, where union officials sought to persuade employers to by-pass the tribunal machinery. Thus the Sheffield ASE delegate reported in November 1915 that,<sup>78</sup>

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<sup>77</sup>Glasgow Herald, April 18, 1916.

<sup>78</sup>ASE, Monthly Journal and Report, November 1915, p.52.

"We are having a few cases at the Munitions Tribunals, but mostly by reason of the arbitrary manner of one or two foremen or managers who expect impossibilities from the workmen. I have suggested to one or two large firms that it would be much better if they would make their complaints to our D.C., and give us an opportunity of investigating their complaints before bringing [them] before the Tribunal, which only creates a feeling of resentment which is not at all desirable."

Indeed, as we saw in chapter eight, the tentative moves to involve local trade union committees in the administration of management disciplinary processes represented both a genuine venture into law-avoidance, an ideological initiative to foster the corporate spirit, and a pragmatic attempt at damage limitation.

Perhaps most significantly, the number of strikes eventually settled without recourse to legal proceedings may well have exceeded 2000 (on the footing that the total number of strikes between August 1914 and March 1918 in all industries was 2504).<sup>79</sup> The more significant disputes in the munitions trades which remained immune from prosecution are indeed too well known to require repeating here. But even a host of minor strikes were settled voluntarily without the merest whiff of impending tribunal proceedings to jog the parties into urgent remedial action. Typical is this report from an ASE delegate,<sup>80</sup>

"At Aylesbury, our men, disgusted with the dilatoriness of the firm in applying national awards, left work and remained out for six days. At an interview held whilst the men were out, we secured the offer of the firm to settle our claims by immediately paying up to the full the national awards, including the December 5/- plus 2½% on piecework prices. The members commenced work on 12th November, and we are now requesting retrospective payment of those overdue awards by application to the Ministry of Labour."

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<sup>79</sup>Moses, "Compulsory Arbitration in Great Britain", *op.cit.*, p. 889.

<sup>80</sup>ASE, *Monthly Journal and Report*, December 1917, p.28. Other sample illustrations include a week-long strike at Barr & Stroud's in Glasgow over an arbitration award of bonus payments. See *ibid.*, March 1918, p.20. Also a one-day stoppage of blacksmiths at Hawthorn Leslie at Hebburn arising out of complaints over physical working conditions at the yard. See ABIS, *1st Quarterly Report*, January-March 1917, p. 2244.



Thus only cave dwellers could have remained unaware that the Munitions Act, as the Official History tritely remarked,<sup>81</sup> "did not prevent strikes from happening [nor] even reduce them to negligible proportions". Indeed, even before the war had ended and when the legal prohibition on strikes was still in existence, the Whitley Committee, as we have seen, made no attempt to disguise this obvious truth.<sup>82</sup>

Thus any assessment of the Act from the perspective of government policy-makers is liable to be inconclusive. Like the proverbial curate's egg, the Act could be said to have been good in parts. Such an analysis will, however, not suffice for our purposes, though it does hint at the ambiguities and paradoxes which inform our own summation of the Act and of the experiences of munitions workers at the hands of the Glasgow tribunal.

Thus at the level of structure, the Act sought to induce the statization of trade unions, endeavouring to shift essentially voluntarist organisations whose rationale had been premised on the maximization of sectional interests, towards objectives which conflicted with those narrow terms of reference. As Beatrice Webb had predicted in June 1915,<sup>83</sup> "If the Government persists [with the Munitions Bill] there will be considerable and perhaps dangerous reaction against the patriotism of some of the [union] leaders." In the event, as we saw in chapter two, the pleas for cooperation by national trade union leaders such as Brownlie of the Engineers, were repudiated, and the local officials, such as Sharp, Bunton and Brodie, whom the CWC had despised for their sell-out over the Munitions Act, were themselves swept up in the mass-mobilisation on Clydeside to demand the repeal of the more obnoxious provisions of the Act. Thus the reaction of rank-and-file trade unionists was in part

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<sup>81</sup>OHMM, Vol. IV, Part II, p.9.

<sup>82</sup>Whitley Committee, Report on Conciliation and Arbitration, Cd. 9099, 1918.

<sup>83</sup>M.I. Cole (ed.) Beatrice Webb's Diary 1912-1924 (London: Longman, 1952) pp 41-2.

directed against the leadership's collaborative policy of gradually eliminating the pursuit of class interests from the objectives of trade unions.

Yet at the same time, as the attempt of the state to alter temporarily the character of trade unionism was meeting mounting resistance from much of the membership on Clydeside, rank-and-file trade unionists were being assailed, through the Munitions Act, from another quarter. Thus as Beveridge, writing shortly after the war, disclosed,<sup>84</sup>

"I have no doubt that the real difficulty about the Munitions Act is that the statutory powers of compulsion were given to the employers - i.e. the workmen's natural enemies."<sup>85</sup>

In fact, what emerged was a tension between the two distinct conceptualizations of law, between social-welfare law and entrepreneurial law, to which Donald Black, as we saw in chapter one, drew attention. Thus Beveridge's "real difficulty" was that an essentially "proactive" (social-welfare) legal code was in the contradictory position of sponsoring "reactive" (entrepreneurial) legal initiatives. One consequence was the sense of outrage when trade unionists inveighed against the Prussian tendencies of those employers who sought to drag them through the tribunal on a vindictive charge. As with those landlords threatening to evict soldiers' wives, such proceedings under the Munitions Act constituted not only a violation of the moral economy of the district,<sup>86</sup> but could be construed by munitions workers

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<sup>84</sup>MUN 5/328/160/R.2, op.cit.

<sup>85</sup>Beveridge's idea was that a labour officer be attached to each factory with sole authority to grant or to withhold leaving certificates, as well as to institute prosecutions against workmen. Though Llewellyn Smith was sceptical that a sufficient number of "discreet" officers could be recruited, the latter step was, of course, eventually taken in the 1917 Act, while the initiative in respect to leaving certificates, till their abolition remained firmly with the employers. See ibid.,

<sup>86</sup>cf., OHMM, Vol. IV, Part II, p. 33n.  
Cf., Melling, "Scottish Industrialists and the Changing Character of Class Relations etc", op.cit., esp. at p.126.



as being in direct conflict with government efforts to promote unity. Thus, the Act could be understood as an instrument in the separate armouries, both of private employers and also of the state, in a context where the distinction between the two tended to be maintained by all but the "advanced" minority of Trade unionists closely associated with the shop stewards' movement.<sup>87</sup> Perhaps this duality, which could, on occasion, paint the government in a benign light and the employers in a divisive one, was one pointer to the non-revolutionary stance adopted by the reconstructed Labour Party in 1918.<sup>88</sup>

It has long been recognized that, at the institutional level, one of the more sensitive points within the British system of industrial relations is the level of the workplace itself. While significant innovations in the development of substantive and procedural norms, such as industry-wide bargaining and wider trade union recognition, emerged during the war, nonetheless, there tended to be lacking any institutional mechanism at the shop floor level (where the Munitions Act had its most direct impact) which could handle the multitude of problems arising daily in the factories and shipyards. In the absence of any satisfactory local machinery for resolving rapidly and efficiently those differences, which the extraordinary demands of war production generated (the engineering industry shop stewards' agreement in late 1917 did offer a potential though belated remedy), resort to direct action, entailing breaches of the Munitions Act, became commonplace. As Phelps Brown has remarked,<sup>89</sup>

"In the typical British situation, [the factory worker's] union will have negotiated no agreement that regulates his relations with

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<sup>87</sup> Many employers, of course, consistently viewed strikes as being directed against government rather than against themselves. It suited them to do so.

<sup>88</sup> Cf., J.M. Winter "A Note on the Reconstruction of the Labour Party in 1918", Scottish Labour History Society Journal, No. 12, 1978, pp 63-9.

<sup>89</sup> E.H. Phelps Brown, "Unofficial Strikes and the Law", Three Banks Review, No. 83, 1969, pp 3-19, at p.12.

management in detail, showing what rights and obligations he has in the issues that arise in the course of his daily work and his service with the firm; nor will he always or often have ready access to a grievance procedure on which he can rely as definite and expeditious. Bargaining on matters that affect his interests goes on at his workplace, but in a rough and ready way which, because it does not recognize a procedure, cannot stigmatize departures from it. So situated, the worker cannot be blamed for fighting his own battle. So long as these conditions persist, legal sanctions are unlikely to deter him".

As an explanation for continued industrial unrest, such a conclusion is unexceptionable. But it is also unexceptional and unsurprising. What is of deeper interest is that if wartime industrial relations, like Nature, abhorred a vacuum, then the munitions tribunal itself rushed in where others feared, or were unwilling, to tread. Thus the tribunal, as we have seen, became the focus for campaigns waged by trade unionists to activate a further outlet through which collective bargaining might be conducted, given the tight reins on wage negotiations imposed through centralized direction and through the operation of the leaving certificate scheme. At first resistant, then reluctant, and finally indulgent, the tribunal was transmogrified over time, becoming yet another legal institution in which form and content were divided one from the other. Indeed, so much so that Fyfe himself proposed the legitimization of this subtle transformation through the inauguration of local arbitration tribunals. Collective bargaining by litigation might certainly appeal to those "sympathetic to the pragmatic behaviour characteristic of trade union officials (including most socialist ones) [who] see only sectionalism and a readiness to settle for modest gains."<sup>90</sup> And no doubt it could be said that those

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<sup>90</sup> James Hinton, "The Rise of the Mass Labour Movement: Growth and Limits", in C.J. Wrigley (ed.) A History of British Industrial Relations, 1875-1914 (Brighton: Harvester Press, 1982), Ch. 2, at p.21.



trade unionists who engaged in such intricate proceedings had much to be modest about. Thus for many of those trade union officials pushed into the tribunal crucible to indulge in sharp verbal exchanges with the employers' representatives and with the tribunal chairmen, conflict management was, more often than not, the name of the game being enacted. And indeed, it was a game in which the tribunal chairmen, in the interests of expediency, found it necessary to cooperate, once the dismal failures of legal coercion had become apparent. For the fact is that the Munitions Act was virtually in a no-win situation in respect to the "rank-and-file", whether militant or moderate, radical or liberal, once it began to operate with bite, as the campaign to reform the Act clearly demonstrated. Thus those radicals who criticized voluntarism were hardly likely to be appeased by corporatism; while voluntarist trade unionists had their own reasons to criticize a corporatist law which punished those who sought to pursue conduct which voluntarism considered legitimate, such as striking over wages, or over union recognition, or over the employment of a non-unionist in a union shop. We would therefore argue that one fragment of the story of the enforcement of the Act in Glasgow is the unspoken and inchoate, but nonetheless existent, collusion of the central figures in the tribunal machinery, in the gradual (though not wholly complete) transition from rigorous law enforcement against industrial lawlessness to the more discreet, subtle and sensitive task of "managing" industrial conflict. Moreover, it was a game which, we believe, was ultimately a successful technique of labour control. But it was successful because both trade unionists and government, despite the impediments posed by fines and punishments on the one hand and by the hostility of a resentful, irritated and highly strategic labour force on the other, could derive some limited advantage from the system.

Thus, as we saw in chapter seven, Fyfe's approach to wage regulation encompassed both tactical concessions to strategic groups of munitions workers in some cases, and dogmatic refusals to budge in others. It entailed the de facto splitting of union from union in pursuit of wage advances. It did not offer any encouragement to Clydeside trade unionists, through unfortunate displays of ineptness comparable to those in 1915, to contemplate more radical political solutions to their grievances. Indeed it offered the prospect, on occasions, of an acceptable alternative to direct action through strikes whose startling effectiveness could scarcely be disguised. Finally, of course, the assertion that managerial authority, in conformity with state planning, had to be upheld, was consistently reaffirmed. This, then, was the scale of the authorities' achievement.

In respect to the tactics of trade union representatives at the tribunal, the delicate juridical cut and thrust, involving the lodging of complaints against employers; the submission of leaving certificate applications; and the vigorous approaches to defending prosecutions, was often (not always) promoted by them as much to contain their membership as to provoke them to more demonstrative and destructive conduct. Yet the paradox is that such robust though nonetheless inherently constitutional (and frequently successful) methods of proceeding could only be mounted by means of an assault on established levels of authority. The "erosion of legitimacy" and the "fundamental advances in consciousness" which Melling has detected for Glasgow prior to the war<sup>91</sup> seemed to blossom even among the bowler-hatted brigade of hitherto cautious and uninspiring local trade union officialdom. Certainly the pragmatic and resourceful

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<sup>91</sup>Melling, "Scottish Industrialists... etc", op.cit., p. 105.



exploitation of the munitions tribunal by trade unionists was principally directed to short-term gains; but the drive and determination, indeed bravado, which inspired their actions, surely broke new ground in penetrating and rupturing the bonds of deference and relations of authority which had hitherto guaranteed the dignity of legal proceedings against insidious attacks on the law's ideological pretensions. Such an assault on the symbols of government may not, of course, have pointed to the vista of possibilities for working people to wrest their due in peacetime from state institutions. But no doubt the non-revolutionary, moderate, socialist Labour Party of 1918 was a congenial political home for the likes of those veterans of the munitions tribunal who had successfully traded controlled aggression for wage concessions and gentle punishments.

There is, indeed, supportive evidence for the proposition that by mobilizing the Munitions Act, by counselling moderation, or by entreating their members to observe factory disciplinary rules, the local trade union officialdom, set apart from the rank-and-file, tended to,<sup>92</sup>

"... become "incorporated" into the collective bargaining machinery, and [came] to occupy an "equivocal position" as "mediators of conflict" between employers and employed".

Yet it is too simplistic to conclude that, "In this situation, collective bargaining developed on the employers' terms."<sup>93</sup> For it was the selfsame local trade union leadership on Clydeside, the targets of CWC vilification, who frequently adopted an aggressive stance on behalf of their members during the tribunal hearings, by

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<sup>92</sup> John Lovell, reviewing Keith Burgess, The Origins of British Industrial Relations (1975) in British Journal of Industrial Relations, Vol. 14, 1976, p.112.

<sup>93</sup> Ibid.

denouncing the Act and its exploitation by local employers.<sup>94</sup> Constitutionalism was to be stretched to its limit, the normal courtesies dispensed with, the restraints on moderate, "civilized" and dignified proceedings deliberately cast aside. Epater les bourgeois may not have been their motto. But such boldness of denunciation must have been shocking to their respectable middle-class listeners.

Indeed, as V.L. Allen has warned,<sup>95</sup>

"The distinction between unions [or officialdom] and rank and file is analytically unsound and empirically absent. It arises from an uncritical acceptance of conventional analyses of bureaucratization and an acceptance of appearances as reality [and] obscures a real understanding of trade unionism...."

In similar fashion, Van Gore has recently reminded us that the term 'rank-and-file', "designates a dialectical relationship between leaders and led; it focuses attention on the ambiguities and problems of popular participation and control".<sup>96</sup> Thus the relationship between the Glasgow "rank-and-file" and local trade union officialdom, in respect to the Munitions Act, was much more complex and ambiguous than any simple proposition which postulates a sharp and unbridgeable schism between the two elements. Indeed, not only is the iron law of oligarchy seriously deficient as an analytical tool in exploring the behaviour of trade union organisation.<sup>97</sup> But in addition, there existed on Clydeside no single, homogeneous rank-and-file, but different

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<sup>94</sup> That accusations of incorporation were not wholly misplaced is nonetheless apparent from the assumption of office as tribunal assessors by some of the local trade union officials. As mentioned elsewhere, they may well have concluded that that was a proper step to take in order to protect their members' interests under the Act.

<sup>95</sup> V.L. Allen, reviewing Tom Clarke and Laurie Clements (eds.) Trade Unions under Capitalism (1977), in Industrial Relations Journal, Vol. 9, 1978, p.80.

<sup>96</sup> Van Gore, "Rank-and-File Dissent", in Wrigley (ed.) op.cit., Ch.3, at p.47.

<sup>97</sup> Cf., Richard Hyman, Marxism and the Sociology of Trade Unionism (London: Pluto Press, 1971), pp 28-33.



groupings which sometimes merged, but often remained separate over time. Some trade unionists undoubtedly conceived of the Act in politically hostile terms. Others may have welcomed the measure as the embodiment of the spirit of patriotism and of sacrifice. For most rank-and-file trade unionists, however, the Act was surely seen mainly as a drastic economic and spatial restriction on their own individual market freedoms, with which they were obliged to come to terms and to evade or manipulate wherever practicable. It may, of course, be argued that wherever their class was identified as the major target of the Act's restrictions; moreover, wherever the measure was widely understood by trade unionists as a coercive tool of government, with which employers could indulge themselves, the critics were thereby engaging in political analysis. But the political lesson, if any, to be derived from their involvement with the Munitions Act, was more likely to be applicable to peacetime; that is, that if the legislative obstacles of state institutions could be scaled; if the legal snares could not only be neutralized but also exploited by unionists for their own advantage during the war, then the prospects of capturing, through vigorous and aggressive though nonetheless "democratic" means, the apparatuses of the state in peacetime, might not be such a remote possibility.

### Conclusions

At the close of chapter one, we referred to the "two faces" of corporatist labour controls, that is, to the display of blunt restrictiveness on the one hand, and of flexibility and opportunism on the other. Thus one face depicted a battery of legal restraints which sought to prohibit munitions workers from disrupting production schedules and from capitalising on the scarcity value conferred on

them by abnormal wartime circumstances. It would therefore be futile, as well as a gross distortion of the evidence, to deny the substantive impact of the munitions code on the freedom of action of countless factory and shipyard workers. For those subjected to tighter discipline at the hands of foremen and under-managers; for those frustrated in their desires to advance their careers elsewhere; for those suffering the indignity of petty fines for various misdemeanours; and for those dragged to the tribunal for presuming to flaunt their right to withdraw labour as free men, the Munitions Act was, indeed, a tool of repressive intent. That it touched the tip of the iceberg of lawlessness is neither here nor there. No penal statute within the criminal code comes remotely near to achieving the elimination of the proscribed conduct in question. Where the Munitions Act bit, then to that extent it was effective in furthering the government's aims; though the rank-and-file reaction to the selectively vigorous and particularly repressive implementation of the Act in the Fairfield case, illustrated the capacity of restrictive labour legislation to amplify, rather than to stifle, industrial unrest (perhaps thereby displaying the "third face" of corporatist law).

But the alternative perspective on bureaucratically structured legal-restrictions which this study reveals is the flexibility of their enforcement and the opportunism with which the Act's manifold provisions could be manipulated to the advantage, admittedly not always unqualified, of those munitions workers against whom it was primarily targeted. It was therefore the ambiguous and doubled-edged quality of wartime legal controls which justifies our analysis in terms of the two faces of corporatist law. Thus the "national interest" cut both ways by requiring employers to conform to state directives which appeared to confer certain benefits on employees at the expense



of their employers. The examples in chapter one of the illegality of suspensions as a disciplinary tool of employers and the prohibition on the "yellow dog" contract of employment which forbade trade union membership, are illustrations of the policy of subordinating the employing class to corporatist standards.<sup>98</sup> Indeed, as we argued in chapter two, the amendment of the 1915 Act only became politically feasible once the "national interest" had been invoked as the justification for reform.

Though flexibility and opportunism are probably best exemplified in the case of "collective bargaining by litigation", to which we have already referred in these conclusions, even the sphere of Ordering of Work prosecutions enabled trade unionists, both full-time officials and lay officers, to expand their orbits of influence with employers by sitting on joint disciplinary committees where their presence could only have ameliorated the chances of errant trade union members who fell foul of factory disciplinary rules. Moreover, it was not unknown for employers to be discomfited by the results of a munitions tribunal prosecution, under the Ordering of Work rules, where foremen and not the accused munitions workers might end up shamefully exposed and discredited. The tribunal's insistence on conformativist conduct on the part of employers was especially noticeable, as we saw in chapter ten, in the case of women indicted before the tribunal. Thus the national interest demanded that the autonomy of employers was no longer to be immune from interloping outsiders. Moreover, the leaving certificate scheme, otherwise an unmitigated disaster for munitions workers, offered some of them the limited opportunity to expose the selfish practice by some employers

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<sup>98</sup>For Askwith's view of the distinctive "public interest" in the settlement of industrial disputes, see Rodney Lowe, "Review Article", in British Journal of Industrial Relations, Vol. 13, 1975, pp 115-20, at pp.118-9.

of labour hoarding. Even where such claims were cast aside by the tribunal, as they commonly were, the symbolic gesture had been made. The applicants' moral superiority had thus been dogmatized before both the tribunal and their employer, and had also been vindicated to themselves and to their fellow-workers.

The most powerful and enduring image emerging from this study, however, is one where industrial militancy and law enforcement by the Glasgow munitions tribunal frequently engaged in a subtle duel with one another. Within this struggle, the enforcement side of the equation, as often as not (especially during the first nine months of the tribunal's turbulent existence) was forced to yield, not to outright lawlessness, but to the force of a rational resistance to penal imposts and to a deeply-rooted tradition of hard bargaining and collective negotiation. Indeed, it was a resistance buttressed by what Melling had recently described more broadly for Glasgow as "an alternative perspective on civil society challenging the dominant role of established institutions and authority relations."<sup>99</sup> Trade union officials, as well as rank-and-file unionists, refused to be cowed by legal straightjackets or by legal paraphernalia. Tribunal chairmen, representatives of law and order, were frequently unable to resist the transformation of their roles from judge to, at most, arbiters. Indeed, there was, on occasion, little hesitation by the legal officials in divesting themselves of judicial functions which even they found constricting, inappropriate and dysfunctional. No doubt the level of militancy displayed during hearings influenced the exercise of judicial discretion towards leniency in many cases. Indeed, in respect to strikes and other forms of industrial action, it seems apparent that, with few exceptions, the tribunal chairmen

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<sup>99</sup>Melling, "Scottish Industrialists... etc", op.cit., p.116.



thought better of implementing the full rigours of the law available to them. For, given the heightened tension on Clydeside, the road to cooperation in production was not paved with summonses and amercements.

An American anthropologist, Sally Falk Moore, has described the life of the Chagga people in Tanzania, or of the garment trade in New York, in terms of,<sup>100</sup>

"... semi-autonomous social fields which can generate rules and customs and symbols internally, possessing rule-making capacities and the means to induce or coerce compliance [but which remain] also vulnerable to rules and decisions and other forces emanating from the larger world by which they are surrounded."

We frankly doubt whether, in order to justify favourable comparisons, Glasgow munitions workers during the First World War constituted a sufficiently coherent and unified social field set within the wider social matrix of the national endeavour. What we do assert, however, is that by grasping the Munitions Act, by repudiating it, by teasing and taunting those who sought to deploy it against them, by scanning its ubiquitous provisions, and by exploring its positive potential, they were able to recreate their relationship to it. In this respect, they reconstructed a social field which, if not quite semi-autonomous, nonetheless, embodied a distinctive and perhaps radicalizing experience of legal authority far removed from that intended by its draftsmen.

In 1917, Sheriff Fyfe, who was a noted authority on Charles Dickens,<sup>101</sup> became president of the Glasgow Dickens Society. In his presidential speech, he observed that if Dickens was hostile to the

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<sup>100</sup> S.F. Moore, Law as Process: An Anthropological Approach (London: Routledge and Kegan Paul, 1978) pp 55-56.

<sup>101</sup> One of his works, Charles Dickens and the Law (1910) is still listed in a popular student textbook today. See Glanville Williams, Learning the Law, 11th edn. (London: Stevens, 1982), p 228n.

law, that was probably due to the famous author's personal experience, "for experience coloured the views of most people in regard to the law".<sup>102</sup> Such enigmatic remarks, we venture to think, would have met with nods and murmurs of approval from those trade union officials who had assembled to bid farewell to the munitions tribunal in February 1921.

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<sup>102</sup>Glasgow Herald, October 23, 1917.



APPENDIX ONEMunitions of War Act 1915Principal Provisions (with minor amendments)Part I (repealed by Wages (Temporary Regulation) Act 1918)

## Prohibition of Lock-outs and Strikes in Certain Cases.

2. (1) An employer shall not declare, cause or take part in a lock-out, and a person employed shall not take part in a strike in connection with any difference to which this part of this Act [dealing with compulsory arbitration] applies, unless the difference has been reported to the Board of Trade [Minister of Labour] and 21 days have elapsed since the date of the report, and the difference has not during that time been referred by the Board of Trade for settlement [by the arbitration provisions] .

(2) If any person acts in contravention of this Section he shall be guilty of an offence under this Act.

## Differences to which Part I applies (repealed 1918)

3. The differences ... are differences as to rates of wages, hours of work, or otherwise as to terms or conditions of or affecting employment on (or in connection with) munitions work ... or ... any other work of any description, if this part of this Act is applied to such a difference by His Majesty by proclamation on the ground that in the opinion of His Majesty, the existence or continuance of a difference is directly or indirectly prejudicial to the manufacture, transport, or supply of munitions of war [as in the case of the South Wales miners in July 1915] .

Part II

## Controlled Establishments.

4. If the Minister of Munitions considers it expedient for the purpose of the successful prosecution of the War that any establishment in which munitions work is carried on should be subject to the special provisions as to limitation of employers' profits and control of persons employed, and other matters contained in this section, he may make an Order declaring that establishment to be a controlled establishment and on such Order being made the following provisions shall apply thereto:

- (3) Any rule, practice or custom not having the force of law which tends to restrict production or employment shall be suspended in the establishment, and if any person induces or attempts to induce any other person (whether any particular person or generally) to comply, or continue to comply, with such a rule, practice or custom, that person shall be guilty of an offence under this Act...
- (5) The employer and every person employed in the establishment shall comply with any regulations made applicable to that establishment by the Minister of Munitions with respect to the general ordering of the work in the establishment, with a view to attaining and maintaining a proper standard of efficiency and with respect to the due observance of the rules of the establishment. If the employer or any person so employed acts in contravention of or fails to comply with any such regulation that employer or person shall be guilty of an offence under this Act.

## Leaving Certificates.

7. (1) A person shall not give employment to a workman, who has within the last previous six weeks ... been employed on or in connection with munitions work [note: not restricted to controlled



establishments] ... unless he holds a certificate from the employer by whom he was last so employed that he left with the consent of his employer or a certificate from the munitions tribunal that the consent has been unreasonably withheld ...

(3) If any person gives employment in contravention of the provisions of this section he shall be guilty of an offence under this Act

[note: employers were thereby subject to prosecution for 'labour-stealing'; workmen's penalty was prohibition from employment in munitions work for a maximum of six weeks] .

[By 2 of the 1917 Act, the Minister of Munitions was granted powers to repeal s.7 of the 1915 Act (order granted October 15th, 1917), thus abolishing leaving certificates, but substituting new provisions designed to prevent men (but not women) from changing from munitions work to other work] .

#### Penalties.

14. (1) Any person guilty of an offence under this Act...

(c) shall, if the offence is a contravention of the provisions of this Act with respect to the prohibition of strikes, be liable to a fine not exceeding £5 for each day or part of a day during which the contravention continues;

and

(d) shall, if the offence is a contravention of or failure to comply with any regulations in a controlled establishment ..

be liable in respect of each offence to a fine not exceeding £3 ...

(2) A fine for any offence under this Act shall be recoverable only before the munitions tribunal established for the purpose under the Act.

### Munitions Tribunals.

15. (1) The munitions tribunal shall be a person ... sitting with some other even number of assessors, one half ... representing employers and the other half ... representing workmen, and the Minister of Munitions, may constitute two classes of munitions tribunals, the first class having jurisdiction to deal with all offences and matters under this Act, the second class having jurisdiction, so far as offences are concerned, to deal only with any contravention of, or failure to comply with, any regulation made applicable to a controlled establishment ...

(4) A person employed or workman shall not be imprisoned in respect of the non-payment of a fine imposed by a munitions tribunal for an offence within the jurisdiction of a [local] tribunal ... but that tribunal may ... make an order requiring such deductions to be made on account of the fine from the wages of the person employed or workman as the tribunal think fit ...

(Note: imprisonment was abolished by section 13 of the Amendment Act 1916, as a consequence of the second Fairfield episode).

### Schedule II

#### Lifting of Trade Practices.

1. Any departure during the war from the practice ruling in the workshops, shipyards,, and other industries prior to the war shall only be for the period of the war ...

6. A record of the nature of the departure from the conditions prevailing when the establishment became a controlled establishment shall be kept, and shall be open for inspection by the authorized representative of the Government.

7. Due notice shall be given to the workmen concerned wherever practicable of any changes of working conditions which it is desired to introduce as the result of the establishment becoming a



controlled establishment, and opportunity for local consultation with workmen or their representatives shall be given if desired ...

(Note: the first Fairfield prosecution, that of the coppersmiths, arose from the company's failure to consult over altered working conditions).

## APPENDIX TWO

The Voluntarist Tradition and Legal Abstention in British Industrial  
Relations  
1870-1914

In 1954, Otto Kahn-Freund observed that,<sup>1</sup>

"... the whole of Britain labour law reflects the history of British industrial relations, and the principal feature of that history was that these relations developed in a sphere of industrial autonomy."

Indeed, studies of the growth of collective bargaining (first district, then national, then plant level bargaining) in the later nineteenth and early twentieth centuries, including those by the Webbs, Clegg, Fox and Thompson, Rodger Charles and John Lovell,<sup>2</sup> are evidence that the growth was achieved in spite of a hostile, judicially orchestrated, legal environment. With the judiciary in this period in the vanguard of the movement to restore trade unions to a state of suppression, in place of the state of toleration registered by the legislative settlement of 1871-76,<sup>3</sup> it is hardly surprising that voluntarism appealed to those trade unions which

<sup>1</sup> Otto Kahn-Freund, "Legal Framework", in Allan Flanders and H.A. Clegg (eds.) The System of Industrial Relations in Great Britain (Oxford: Basil Blackwell, 1954) pp 42-127, at p. 89.

<sup>2</sup> S. and B. Webb, The History of Trade Unionism (London: Longman, 1920); idem, Industrial Democracy (London: Longman, 1920); H.A. Clegg, Alan Fox and A.F. Thompson, A History of British Trade Unions Since 1889, Vol. 1 (London: Oxford University Press, 1964); Rodger Charles, The Development of Industrial Relations in Britain 1911-1939 (London: Hutchinson, 1973); John Lovell, British Trade Unions 1875-1933 (London: Macmillan, 1977). The sources are too numerous to list exhaustively.

<sup>3</sup> Cf., A.W.J. Thomson, "The Injunction in Trade Disputes in Britain before 1910", Industrial and Labor Relations Review, Vol. 19, 1965-6, pp 213-23; R. Brown, "The Temperton v Russell Case (1893): The Beginning of the Legal Offensive against the Unions", Bulletin of Economic Research, Vol. 23, 1971, pp 50-66; John Saville, "Trade Unions and Free Labour: The Background to the Taff Vale Decision", in A. Briggs and J. Saville (eds.) Essays in Labour History (London: Macmillan, 1960) Ch. 9.



considered their bargaining positions otherwise secure.<sup>4</sup> Yet as Thomson and Engleman have recently stressed, voluntarism, by which is meant the preference both for non-legally enforceable collective agreements, and also for the autonomous settlement of terms and conditions of employment by the parties themselves, rather than by third parties or by the state, was enthusiastically embraced by employers as well as by unions.

"Employer associations saw their defence of managerial prerogatives as being not only against unions but also against the state. They were rather different bodies in their approach from their present-day successors, being much more aggressive and self-confident."<sup>5</sup>

They were, in particular, highly suspicious of politicians and of their legislative proposals for reform. As Sir Andrew Noble of the EEF, and vice-chairman of Armstrong, Whitworth, told the Royal Commission on Trade Union Legislation in 1903,<sup>6</sup>

"... the way to improve industrial relations was not to pass new laws but to extend conciliation on the principles of the Engineering Industry Procedure until the desire for legislation on the conduct of trade disputes disappeared."

Of course, what appealed to the engineering employers did not necessarily satisfy employers in other trades such as railways, where the basic procedural norm of recognition<sup>7</sup> had not yet been established. And, of course, by stressing the national procedure, the engineering employers could maintain the belief that substantive

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<sup>4</sup>How ironic that Lynden Macassey, one of the Ministry of Munitions trouble-shooters on the Clyde during the war, should declare in 1920, "If there is one institution in the country which enjoys the confidence of labour, it is the High Court of Justice". See Sir Lynden Macassey, "The Industrial Courts Act 1919", Journal of Comparative Legislation, Vol. 2, 1920, pp 72-6, at p.74.

<sup>5</sup>A.W.J. Thomson and S.R. Engleman, The Industrial Relations Act: A Review and Analysis (London: Martin Robertson, 1975), p.7.

<sup>6</sup>Quoted, ibid., p.8.

<sup>7</sup>For the "norms" of collective bargaining, see Charles, op.cit., pp 28-32.

terms, especially in respect to shop floor workers, still remained subject to managerial prerogative, as, indeed, the national engineering lockout of 1897 sought to demonstrate. Nonetheless, the engineering employers' rejection of demands for a legally regulated system of industrial relations corresponded to the tradition of voluntarist autonomy which also marked the growth of industrial relations in the printing, cotton-spinning, boot and shoe, tailoring, ship-building and building industries.<sup>8</sup>

The method of enforcement of the terms of collective agreements was addressed by the Industrial Council, a joint body of senior trade union officials and employers which reported in 1913. Though prepared to countenance the extension of recognised terms by law to those employers undercutting negotiated rates (an expedient eventually enshrined in peace-time law until repealed by the Employment Act 1980), the thrust of the council's report on Industrial Agreements was that,<sup>9</sup>

"... the whole organisation of collective bargaining is based on the principle of consent. We have found that such collective agreements have as a rule been kept, and we are loath to interfere with the internal organisation of the associations on both sides by putting upon them the legal necessity of exercising compulsion on their members."

To this end, "moral influence", and not legal sanction, was recommended as the means to ensure compliance with collective agreements. As Phelps Brown, in confronting the alternative to voluntarism comments,<sup>10</sup>

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<sup>8</sup> Lovell, op.cit., passim.

<sup>9</sup> Quoted in Kevin Hawkins "The Future of Collective Bargaining",

<sup>10</sup> Industrial Relations Journal, Vol. 10, 1979/80, pp 10-21, at p.13.

Phelps Brown, "Unofficial Strikes and the Law", op.cit., p. 10.



"Where agreement is not reached voluntarily but men may not withhold their labour, the terms on which they are to work can only be, however considerately, imposed on them from without: but men required to work on terms imposed on them by others cannot be expected to work willingly. We touch here upon an article of faith, that alone can account for the fervour with which the opponents of legal sanctions assail the proposal to introduce them at any point..."

Thus, voluntarism is not defined simply in terms of a pragmatic acceptance that the regulation of industrial relations can be conducted by the bargaining parties without resort to the sanction of law in the event of breach. Voluntarism has also been embraced as an ideology, as a value in itself which justifies opposition in principle to legal support and regulation. Thus, there existed not only a powerful experiential, but also, according to Kevin Hawkins,<sup>11</sup> a

"... strong intellectual and emotional preference for autonomy and self-regulation which is thought to have dominated British industrial relations since the repeal of the Combination Acts."

Of course, in the circumstances of total war, and with military success in doubt, those sentiments in favour of "autonomy and self-regulation" gradually came under fire and eventually were overridden by the Munitions Act in July 1915; though whether the majority of employers and trade unions could thereby be taken as wedded to the principle of legal intervention, per se, in industrial relations, is surely open to doubt.

The passing of the Munitions Act also, of course, signalled a rapid about-turn in the philosophy of the state itself towards the conduct of industrial relations. For the state, no longer left merely "holding the ring" within the framework of collective laissez-faire, now became dramatically interventionist, far beyond the limited

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<sup>11</sup> Kevin Hawkins, "The Decline of Voluntarism", Industrial Relations Journal, Vol. 2, 1971, pp 24-41, at p.24. Businessmen, in their commercial transactions, probably also favoured self-regulation, viewing litigation as an undignified expedient.

inroads represented by the Conciliation Act 1896, the archetypal measure of "auxiliary" labour law which Kahn-Freund analysed as tending to encourage the growth of voluntarist, non-legal collective bargaining and dispute settlement.

"All these compulsory arbitration statutes" wrote Kahn-Freund,<sup>12</sup> "which provided for penalties or damages in case of non-compliance were written in vain - but the one statute which organised nothing but [departmental] persuasive efforts ... was a conspicuous success ... [The failed measures] were not linked with the autonomous institutions of industry itself. They were alien to the general body of industrial relations."<sup>13</sup>

Thus improved state provision through legislation to assist the reconciliation of industrial differences did not infringe the principles of voluntarism. On the contrary, such measures as the Conciliation Act or the peace-keeping efforts of the Labour Department of the Board of Trade, sought to enhance autonomous rule-making, though as Davidson argues, on terms which tended to favour employers.<sup>14</sup>

Abstentionist or negative labour law was therefore not synonymous with the absence of law within the industrial relations system. Kahn-Freund has, for example, carefully drawn distinctions between those auxiliary, regulatory and restrictive labour laws which have impinged on industrial relations since the 1870s. The first category sought to provide support for the bargaining process. The second covered those substantive provisions constituting terms and conditions of employment where collective bargaining failed to penetrate. Health, safety and minimum wage laws (including the Truck

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<sup>12</sup> Kahn-Freund "Industrial Relations and the Law: Retrospect and Prospect", op.cit., p. 304.

<sup>13</sup> For a radical critique of voluntarism prior to the war, which also poses the crucial question, 'For whom was the Conciliation Act a success?', see Roger Davidson, "The Board of Trade and Industrial Relations, 1896-1914", Historical Journal, Vol. 21, 1978, pp 571-91, esp. at pp 572-3, 585-91

<sup>14</sup> Ibid.



Acts) might be cited as examples. Finally, restrictive labour laws sought to establish the "Queensberry Rules" of permissible and impermissible forms of industrial conflict, such as picketing law. It would be difficult, therefore, to dispute the existence, for the past century, of a "legal framework" to the conduct of industrial relations, though one predominantly distinguished by its compatibility with autonomous collective bargaining. Thus apart from wartime or perhaps during periods of statutory incomes policy, there has not in general existed the direct legal enforceability of the content of collective agreements, nor the mandatory imposition of terms of employment other than those agreed upon by the bargaining parties themselves,<sup>15</sup> nor the imposition of legal sanctions for the direct breach of the collective agreement.<sup>16</sup> In this respect, the contrast with the Munitions Act emphasises the radical nature of the departure in 1915 from the assumptions of autonomy built into the pre-war system of industrial relations.

A pluralist framework which enabled the bargaining parties to reach their own accommodations free from the direct intrusions of the state, could hardly fail to afford a low priority to considerations incompatible with the pursuit of the narrower interests of the bargainers themselves. Thus as Kenneth Knowles has written,<sup>17</sup>

"... our present bipartite system, admirable as a vestigial relic of Victorian laissez-faire, was built to satisfy sectional interests: it can hardly be expected to operate, after exhortation, in the national interest."

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<sup>15</sup> Though the Employment Act 1982 does render void any clause in a commercial contract which requires contractors or sub-contractors to employ union-only labour. This may, of course, affect the content of collective agreements.

<sup>16</sup> The Industrial Relations Act 1971 declared that collective agreements were to be legally enforceable contracts unless the parties expressly declared otherwise. They invariably did so.

<sup>17</sup> Quoted in Hawkins, "The Decline of Voluntarism", op.cit. p.29.

Thus the wartime appeal of patriotism which disposed workers to cooperate with employers in pursuit of the aim of national salvation, nonetheless competed with other pressures which might disrupt this fragile unity. The elimination of strikes, disorder and mistrust was, as we know, unattainable. But part of the explanation may lie in the force of the tradition of self-regulation. As Flanders has observed,<sup>18</sup>

"Traditions are not accepted simply because the routines in which they are expressed have been sanctified by the passage of time. They derive their strength from the fact that they embody for the group the lessons of its corporate, social experience. The normative and binding character which traditions acquire is due to their having proved their worth as patterns of behaviour which have consistently succeeded in advancing the group's goals and values. Indeed, its traditions may become the sheet anchor of the group's goals and values, which may never be separately articulated."

That "corporate, social experience" included the recognition that trade union organisational rights were achieved before working-class political rights were partially obtained in 1867. Such rights did not therefore depend on parliamentary influence. It was only a hostile legal interpretation of trade union organisation and activity, and not the failure to organise collectively, which drove trade unions later to secure legislative immunities. To exist and to negotiate with employers did not, in principle, require trade unions to embrace politics, parliament and law. Since "law" was invariably hostile to trade unions, they chose instead the path of voluntarism and autonomous collective bargaining.

Of course, this account would be misleading were it to imply that a commitment to voluntarism was universally shared by all employers and trade unionists in the fifty years or so before 1915. Indeed, there

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<sup>18</sup> Allan Flanders, Management and Unions (London: Faber, 1970), p 279. Cf., ibid., "The Tradition of Voluntarism," British Journal of Industrial Relations, Vol. 12, 1974, pp 352-70.



is abundant evidence of the determination of certain employers, most notably in the railway and shipping industries, to demand the vigorous containment of trade unionism by law, and who long resisted attempts by unions to achieve recognition for bargaining purposes. On the other hand, a number of trade unions were prepared to contemplate reliance on legally enforceable collective agreements; that is, they were prepared to favour an interventionist, rather than an abstentionist, legal framework for industrial relations. But as Pelling has pointed out,<sup>19</sup> such proposals tended to reflect the weakness of the bargaining position of such trade unions, perhaps best illustrated by the case of the Amalgamated Society of Railway Servants and its general secretary, Richard Bell, whose efforts to secure recognition from the railway employers were consistently thwarted. Legally enforceable collective bargaining could therefore be interpreted as the back-door route to recognition, and not an affirmation of legalism per se. Indeed post-war legal provisions, such as in cotton textiles, must also be interpreted as responses to precarious market positions,<sup>20</sup> and might therefore possess an affinity with the trade boards principle established in 1909, the rationale of which was to render such legally constituted boards redundant once autonomous collective bargaining became viable.

Moreover, many politicians and civil servants were prepared to question whether the settlement of 1906, with its abstentionist trade union immunities, ought to be replaced, not by a return to Taff Vale, but by a system of positive legal rights and obligations which would

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<sup>19</sup> Henry Pelling, "Trade Unions, Workers and the Law", in Henry Pelling, Popular Politics and Society in Late Victorian Britain (London: Macmillan, 1968).

<sup>20</sup> Rodger Charles, The Development of Industrial Relations in Britain 1911-1939, op.cit., pp 205 et seq.

weigh more heavily on the right of trade unions to take strike action. Labour law, however, has often been a kind of political bran-tub which different political parties could dip into in order to gain electoral popularity. Its "unique reversibility", which stands in sharp contrast with the gradual evolution of the common law in less sensitive areas such as commercial contract law or negligence law, makes it especially attractive to politicians. Consequently, not every proposal to reform labour law possessed instrumental, as distinct from political or symbolic significance, a view which, arguably, applies equally to the enactment of the Munitions Act, whose symbolic importance ought not to be neglected.

Yet the evidence of pervasive policy proposals to reform labour law along more interventionist lines before the war;<sup>21</sup> or the existence of the judicial counter-attack against the unions in the 1890s, culminating in the Taff Vale case;<sup>22</sup> resort to Truck Act prosecutions;<sup>23</sup> the widespread fining of individuals arising from breach of contract, as in Taff Vale itself<sup>24</sup> or in the Denaby and Cadeby conspiracy case in 1902<sup>25</sup> (as well as more generally in mining, shipping and cotton); or even the enactment of statutory wage regulation provisions such as the Coal Mines Act 1912<sup>26</sup> or the Trade Boards Act 1909, cannot be taken

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<sup>21</sup> See Davidson (supra, note 13); also cf., José Harris, William Beveridge, op.cit., pp 92-4, for Beveridge's examination of trade union law between 1904-06.

<sup>22</sup> See note 3 (supra).

<sup>23</sup> Cf., S.C. on the Truck Acts, Cd 4442 (1908).

<sup>24</sup> Clegg, Fox and Thompson, op.cit. p. 314; F. Bealey and H. Pelling, Labour and Politics, 1900-1906 (London: Macmillan, 1958), p.62.

<sup>25</sup> R.G. Neville, "In the Wake of Taff Vale: the Denaby and Cadeby Miners' Strike and Conspiracy Case, 1902-06", in John Benson and R.G. Neville (eds) Studies in the South Yorkshire Coal Industry (Manchester: University Press, 1976) ch. 7, at p. 151.

<sup>26</sup> Every award was to be an implied term of the worker's contract of employment and therefore enforceable by him only through a civil action for breach of contract. See Henry Slessor's role in the drafting of the 1912 Act in his autobiography, Judgment Reserved (London: Hutchinson, 1941) pp 46-7.



as a refutation of the thesis that collective labour relations in the pre-war period were conducted within a predominantly voluntarist and abstentionist legal framework.

In his account of Lloyd George's relations with the labour movement prior to the war, Wrigley has suggested that the pre-war changes in Board of Trade policy on minimum wages, labour unrest and conciliation and arbitration "made Lloyd George's task much easier in setting up a wartime system to control industrial relations".<sup>27</sup> Arguably, the civil servants' pre-war proposals to tinker with restrictive labour laws - which came to nought - meant merely that some familiarity with the legal issues, such as the question of the legal enforceability of collective agreements or constraints on the right to strike, already existed. But this civil service expertise was of little value in preparing the wartime measures, for the fact remains that the proposals eventually arrived in 1915 bore no affinity to the pre-war legal structure. In short, Wrigley's argument, insofar as premised on the identification of similarities between pre-war and wartime labour legislation, fails to distinguish between the facilitatory role of the "New Liberal" state and the directive role of the wartime, corporatist-inspired, state. It may, of course, be true that in 1912 Lloyd George thought he detected a move to compulsory arbitration. But perhaps he was too much influenced by the legislative outcome of the coal dispute that year and also by the temper of leading Tories such as Steel-Maitland and F.E. Smith (later Lord Birkenhead) who were strong advocates of a tighter legal discipline over trade unions.

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<sup>27</sup>Wrigley, David Lloyd George and the British Labour Movement, op.cit., p77.

More crucially, he neglected (as, indeed, does Wrigley) Sir George Askwith's careful distinction between compulsory and permissive state powers of intervention, as illustrated in the latter's complex attitude to the Canadian Lemieux Act.<sup>28</sup> He also misread, or ignored, the views of leading employers and unions, for example, those on the Industrial Council (as we have seen) whose commitment to voluntarism was, overall, stronger than the opposite pull to legalism. State intervention prior to the war was, with the principal exception of minimum wage legislation, (the latter surely a branch of social welfare reform) securely anchored in the voluntarist tradition which was most energetically expressed at the shop floor level. In sum, the transition to wartime compulsion was achieved despite, rather than with the aid of, the earlier experience.

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<sup>28</sup> Lord Askwith, Industrial Problems and Disputes, op.cit., pp 245-6; citing his response to the Industrial Council's report on industrial agreements (1912). Askwith concluded, "I consider that the forwarding of the spirit and intent of conciliation is the more valuable portion of the Canadian Act, and that an Act on these lines, even if the restrictive features which aim at delaying stoppage until after inquiry were omitted, would be suitable and practicable in this country".



APPENDIX THREE

A Note on the Relationship between Leaving Certificates and Military Service

We noted in chapter nine that with one exception policy-makers tended not to make explicit references to the relationship between leaving certificates and military service. That one exception arose in a rather technical form during the Parliamentary debates on the two military service measures of 1916. Thus the May 1916 Act had drastically reduced the period of exemption from call-up, fixed in January 1916 for those skilled workers who had joined munitions firms since August 15, 1915 (national registration day), and who had left their jobs. From an original period of two months, i.e. six weeks unemployment in the event that they were denied leaving certificates, plus a further two weeks, such workers now had a bare fortnight to avoid enlistment and find suitable alternative employment,<sup>1</sup> though the lodging of an appeal to the military tribunal to extend exemption might prolong the immunity from call-up.<sup>2</sup> Thus potential employers were deterred by the lack of leaving certificates from hiring such labour, and if no appeal were submitted, the recruiting sergeant would presumably have little hesitation in forcing such workers to accept the King's shilling. Perhaps this amounted to the closest approximation to industrial conscription devised during the

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<sup>1</sup>Cf., J.H. Thomas at the TUC Special Congress, London, June 30, 1916, Report, p.104.

<sup>2</sup>How many men thus succeeded in extending exemption is not known. Hinton's remark that there was a two-month period of continuing exemption for those who had left munitions work relates only to the January 1916 provisions. His further comment that, "This was far from watertight protection..." is, therefore, something of an understatement. See Hinton, The First Shop Stewards Movement, op.cit., p.38.

war, despite the government's attempt, in the wake of Asquith's pledge against industrial conscription in January 1916, to repudiate the implication. For it offered the employer a powerful disciplinary weapon against his workforce, so potentially effective that even the Official History of the Ministry of Munitions described the statutory measures as "Provisions Relating to Industrial Compulsion".<sup>3</sup> And although the official historians argued that,<sup>4</sup>

"... the danger anticipated was imaginary, accidents excepted. For the employer was not permitted by the Ministry of Munitions to withdraw a badged man's certificate; and the provisions of the Munitions of War (Amendment) Act rendered it practically certain that any man "victimised" by a misuse of the Military Service Acts would obtain a leaving certificate from the Munitions Tribunal, even if his employer was not legally bound to give him such a certificate,"

the instances cited in chapter nine demonstrate that a number of employers did debadge virtually at will, and that munitions tribunals might, unsurprisingly, be unwilling to rescue munitions workers from the clutches of the military.

It is indeed perhaps appropriate at this point to refer briefly to the broader question of industrial conscription. The wartime analysis, on class lines, of this elusive concept,<sup>5</sup> has been viewed by some recent writers<sup>6</sup> as a staging post in the development of a radical critique of the state, which resulted, in 1918, in the Labour Party's somewhat ambiguous commitment to socialism. Yet if the profounder fears expressed both in pamphlets such as Philip

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<sup>3</sup>OHMM, Vol. IV, Part III, p.74.

<sup>4</sup>Ibid., p.75.

<sup>5</sup>Ibid., pp 58-9, "The Meaning of Industrial Conscription".

<sup>6</sup>Cf., Winter, Socialism and the Challenge of War, op.cit., pp 209-17.



Snowden's Labour in Chains (January 1917), J.A. Hobson's Forced Labour (early 1917) or the WEWNC's Compulsory Military Service and Industrial Conscription (later 1915), as well as in a multitude of resolutions (for example, at the Scottish TUC, Falkirk, 1917,<sup>7</sup> or at an NCCL conference in Glasgow),<sup>8</sup> were not realized in the wake of "national service" proposals,<sup>9</sup> there were yet more substantive matters upon which contemporaries might bite. In particular, and in spite of pledges that such developments would not take place, the employment of soldiers on civilian work, where Army discipline and rates of pay prevailed, constantly frightened both trade unions and the Labour Party,<sup>10</sup> unmoved by James Sexton's rosy portrayal of his own Liverpool Dockers' Battalion where civilians dressed up as soldiers.<sup>11</sup> Yet it may be hazarded that the attack on wage rates was perceived by unions to be as dangerous as the use of military labour under Army discipline.

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<sup>7</sup>Glasgow Herald, April 28, 1917.

<sup>8</sup>Ibid., December 25, 1916.

<sup>9</sup>See WEWNC, What is Meant by a "National Service" Law? (c. late 1916); Glasgow Herald, October 5, 9, 1917; OHMM, Vol. VI, Parts II-III, pp 17-20. As Hinton tersely observed, "The scheme failed". See Hinton, op.cit., p. 40.

<sup>10</sup>Cf., the deputation of Labour MPs and trade union leaders to interview Lloyd George at the War Office: Glasgow Herald, August 28, 1916; also TUC Annual Congress, Birmingham 1916: ibid., September 8, 1916; also Scottish Mine Workers' Conference: ibid., August 11, 1916.

<sup>11</sup>At the TUC congress at Birmingham, Sexton remarked that, "... if every trade union in the country got the same conditions, they would not be so damned badly off after all". See ibid., September 8, 1916. Cf., Wrigley, David Lloyd George and the British Labour Movement, op.cit., pp 115-6. For a proposed dockers' battalion in London, see Bev. V, 21, ff 220-1.

## APPENDIX FOUR

A Munitions Tribunal Transcript of ProceedingsMUNITIONS COURT.<sup>1</sup>

11-28 a.m.

ENTER Chairman, two Assessors, Clerk, and Reports Officer, who take their respective seats.

Clerk: Fincher and the Royal Arsenal. (Hands complaint form and pad of paper to Chairman.)

Chairman (to Clerk): This pencil has no point. (Clerk produces another.) Now we can get on. (Carbon paper flutters off dais, and is restored by Reports Officer.) Thank you. I wish the Ministry would devise a better system for taking notes. Please convey this expression of opinion to Dr. Addison.

Reports Officer: Yes, sir. I have already drafted three minutes on this subject; we propose to call a conference of Chairmen at the Albert Hall to settle the matter. I understand Mr. Rusher has consented to take the chair, so that no time may be lost over unnecessary trifles.

Chairman: Thank God. Now let us get on. In this case A. Pincher is asking for a certificate, and his grounds are (reads) (1) There is never no work to be done; we are kept idling for weeks. (2) The foreman and chief superintendent make use of foul language. (3) My health is breaking down through the strain of continuous labour. (To Applicant): Is your name Pincher?

Applicant: Yes, my lord.

Chairman: Christian?

Applicant: No, Jew by conversion.

Chairman: What I want to know is your first name. Albert? Alfonso? Augustus?

Applicant: Alf.

Workman's Assessor: There's a good, honest ring about the name.

Employer's Assessor: I don't agree. Pincher sticks in my gizzard.

Chairman: Let's get on. How long have you been at the Arsenal?

Applicant: Twenty-five years, man and boy, and I'm about fed up.

Chairman: What do you mean?

Applicant: I want a sustificate.

Chairman: I know that; hence your presence here to-day.

Applicant: Beg pardon, sir; I'm a bit deaf.

Chairman: I said, hence your presence here to-day.

Applicant: No, sir; I can't 'ear to-day; nor I don't expect to to-morrow.

Clerk (shouting): The Chairman said "Hence your presence here to-day."

Applicant: Yes, sir; I knew that hymn as a boy. I think I can recall the next line.

Chairman: This Tribunal is not a Sunday school. Let's get on.

Reports Officer (handing up pink pamphlet): Have you seen this appeal case, sir? The Scotch judge has held that hymns may be given in evidence, except in cases where the oath has been administered.

Chairman: I am not bound by any Scotch decisions—especially in matters of religion. (To applicant) What are you?

Applicant: Consumptive.

Chairman: We'll soon see about that. What's your work?

Applicant: Boot cleaner in the chief superintendent's 'ouse.

Chairman (to Clerk): I question if this is munition work. Do you think it is?

Clerk: Yes and no. Yes, if the boots are used when inspecting shells; no, if used for dances, cinema visits, and night clubs.

Chairman (to Assessors): A very clear-headed man, the Clerk. This is a difficult point. (To Reports Officer): Do you know of any case governing this?

Reports Officer: There are two cases, approximate to, but not quite on all fours with this. We are having certain boots examined by the Public Analyst at this moment.

<sup>1</sup> ASE, Monthly Journal and Report, July 1917, pp 51-2.



Chairman: There is the further point, whether he was working in the the controlled establishment. (To the Arsenal Representative): Is the Chief Superintendent's house controlled?

Arsenal Representative: We maintain that it is. It is within the compound, and only 16 miles from the main entrance.

Chairman: I will hold the legal issue in abeyance for the moment.

Workman's Assessor: I hold Pincher's a boot black, and can go where 'e chooses when 'e chooses. (Clerk has a slight seizure, but recovers on hearing—)

Employer's Assessor: The country is at war; let the matter be thrashed out.

Applicant: Thrashed out? I'd like to see 'im try it on with me.

Chairman: Let's get on. I understand you have no work to do.

Applicant: That's right.

Chairman: Piecework or day rate?

Applicant: You've 'it it. It is piecework, I don't think. His feet's so tender 'e can't get 'is boots off. I can't keep two 'omes on the day rate.

Chairman: Now as to language, what has the foreman said?

Applicant: ————

Chairman: Clearly this is munition work, and the establishment is within the order.

Certificate refused.

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